

**Appendix A**  
**SELECTED PASSAGES FROM THE FLORIDA**  
**STATUTES AND FLORIDA ADMINISTRATIVE**  
**CODE**



## SELECTED PASSAGES FROM SECTION 187.201, F.S.

### 187.201 State Comprehensive Plan Adopted

#### 8) Water Resources

- (a) Goal. --Florida shall assure the availability of an adequate supply of water for all competing uses deemed reasonable and beneficial and shall maintain the functions of natural systems and the overall present level of surface and ground water quality. Florida shall improve and restore the quality of waters not presently meeting water quality standards.
- (b) Policies. --
  - 1. Ensure the safety and quality of drinking water supplies and promote the development of reverse osmosis and desalinization technologies for developing water supplies.
  - 2. Identify and protect the functions of water recharge area and provide incentives for their conservation.
  - 3. Encourage the development of local and regional water supplies within water management districts instead of transporting surface water across district boundaries.
  - 4. Protect and use natural water systems in lieu of structural alternatives and restore modified systems.
  - 5. Ensure that new development is compatible with existing local and regional water supplies.
  - 6. Establish minimum seasonal flows and levels for surface watercourses with primary consideration given to the protection of natural resources, especially marine, estuarine, and aquatic ecosystems.
  - 7. Discourage the channelization, diversion, or damming of natural riverine systems.
  - 8. Encourage the development of a strict floodplain management program by state and local governments designed to preserve hydrologically significant wetlands and other natural floodplain features.
  - 9. Protect aquifers from depletion and contamination through appropriate regulatory programs and through incentives.
  - 10. Protect surface and ground water quality and quantity in the state.
  - 11. Promote water conservation as an integral part of water management programs as well as the use and reuse of water of the lowest acceptable quality for the purposes intended.
  - 12. Eliminate the discharge of inadequately treated wastewater and stormwater runoff into the waters of the state.
  - 13. Identify and develop alternative methods of wastewater treatment, disposal, and reuse of wastewater to reduce degradation of water resources.

14. Reserve from use that water necessary to support essential non-withdrawal demands, including navigation, recreation, and the protection of fish and wildlife.

History. --- s.2, ch. 85-57; s. 1, ch. 87-354; s. 47, ch. 88-130; s. 4, ch. 89-279; s.85, ch. 90-201; s. 28, ch. 91-5; s. 103, ch. 91-282.

## **SELECTED PASSAGES FROM SECTIONS 373.016 - 373.62, F.S.**

### **Part I State Water Resource Plan**

#### **373.016 Declaration of Policy**

- (1) The waters in the state are among its basic resources. Such waters have not heretofore been conserved or fully controlled so as to realize their full beneficial use.
- (2) The department and the governing board shall take into account cumulative impacts on water resources and manage those resources in a manner to ensure their sustainability.
- (3) It is further declared to be the policy of the Legislature:
  - (a) To provide for the management of water and related land resources;
  - (b) To promote the conservation, replenishment, recapture, enhancement, development, and proper utilization of surface and ground water;
  - (c) To develop and regulate dams, impoundments, reservoirs, and other works and to provide water storage for beneficial purposes;
  - (d) To promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems;
  - (e) To prevent damage from floods, soil erosion, and excessive drainage;
  - (f) To minimize degradation of water resources caused by the discharge of stormwater;
  - (g) To preserve natural resources, fish, and wildlife;
  - (h) To promote the public policy set forth in s. 403.021;
  - (i) To promote recreational development, protect public lands, and assist in maintaining the navigability of rivers and harbors; and
  - (j) Otherwise to promote the health, safety, and general welfare of the people of this state.

In implementing this chapter, the department and the governing board shall construe and apply the policies in this subsection as a whole, and no specific policy is to be construed or applied in isolation from the other policies in this subsection.

- (4)(a) Because water constitutes a public resource benefiting the entire state, it is the policy of the Legislature that the waters in the state be managed on a state and regional basis. Consistent with this directive, the Legislature recognizes the need to allocate water throughout the state so as to meet all reasonable-beneficial uses. However, the Legislature acknowledges that such allocations have in the past adversely affected the water resources of certain areas in this state. To protect such water resources and to meet the current and future needs of those areas with abundant water, the Legislature directs the department and the water management districts to encourage the use of water from sources nearest the area of use or application whenever practicable. Such sources shall include all naturally occurring water sources and all alternative water sources, including but not limited to, desalination, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery. Reuse of potable reclaimed water and stormwater shall not be subject to the evaluation described in s. 373.223(3)(a)-(g). However, this directive to encourage the use of water, whenever practicable, from sources nearest the area of use or application shall not apply to the transport and direct and indirect use of water within the area encompassed by the Central and Southern Florida Flood Control Project, nor shall it apply anywhere in the state to the transport and use of water supplied exclusively for bottled water as defined in s. 500.03(1)(d), nor shall it apply to the transport and use of reclaimed water for electrical power production by an electric utility as defined in section 366.02(2).
- (4)(b) In establishing the policy outlined in paragraph (a), the Legislature realizes that under certain circumstances the need to transport water from distant sources may be necessary for environmental, technical, or economic reasons.
- (5) The Legislature recognizes that the water resource problems of the state vary from region to region, both in magnitude and complexity. It is therefore the intent of the Legislature to vest in the Department of Environmental Protection or its successor agency the power and responsibility to accomplish the conservation, protection, management, and control of the waters of the state and with sufficient flexibility and discretion to accomplish these ends through delegation of appropriate powers to the various water management districts. The department may exercise any power herein authorized to be exercised by a water management district; however, to the greatest extent practicable, such power should be delegated to the governing board of a water management district.
- (6) It is further declared the policy of the Legislature that each water management district, to the extent consistent with effective management practices, shall approximate its fiscal and budget policies and procedures to those of the state.

History.--s. 2, part I, ch. 72-299; s. 36, ch. 79-65; s. 70, ch. 83-310; s. 5, ch. 89-279; s. 20, ch. 93-213; s. 250, ch. 94-356; s. 1, ch. 97-160.

**373.019 Definitions.—**

When appearing in this chapter or in any rule, regulation, or order adopted pursuant thereto, the following words shall, unless the context clearly indicates otherwise, mean:

- (1) “Coastal waters” means waters of the Atlantic Ocean or the Gulf of Mexico within the jurisdiction of the state.
- (2) “Department” means the Department of Environmental Protection or its successor agency or agencies.
- (3) “District water management plan” means the regional water resource plan developed by a governing board under s. 373.036.
- (4) “Domestic use” means the use of water for the individual personal household purposes of drinking, bathing, cooking, or sanitation. All other uses shall not be considered domestic.
- (5) “Florida water plan” means the state-level water resource plan developed by the department under s. 373.036.
- (6) “Governing board” means the governing board of a water management district.
- (7) “Ground water” means water beneath the surface of the ground, whether or not flowing through known and definite channels.
- (8) “Impoundment” means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.
- (9) “Independent scientific peer review” means the review of scientific data, theories, and methodologies by a panel of independent, recognized experts in the fields of hydrology, hydrogeology, limnology, and other scientific disciplines relevant to the matters being reviewed under s. 373.042.
- (10) “Nonregulated use” means any use of water which is exempted from regulation by the provisions of this chapter.
- (11) “Other watercourse” means any canal, ditch, or other artificial watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted.
- (12) “Person” means any and all persons, natural or artificial, including any individual, firm, association, organization, partnership, business trust, corporation, company, the United States of America, and the state and all political subdivisions, regions, districts, municipalities, and public agencies thereof. The enumeration herein is not intended to be exclusive or exhaustive.
- (13) “Reasonable-beneficial use” means the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.
- (14) “Regional water supply plan” means a detailed water supply plan developed by a governing board under s. 373.036<sup>1</sup>.

- (15) “Stream” means any river, creek, slough, or natural watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some part of the bed or channel has been dredged or improved does not prevent the watercourse from being a stream.
- (16) “Surface water” means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface.
- (17) “Water” or “waters in the state” means any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.
- (18) “Water management district” means any flood control, resource management, or water management district operating under the authority of this chapter.
- (19) “Water resource development” means the formulation and implementation of regional water resource management strategies, including the collection and evaluation of surface water and ground water data; structural and nonstructural programs to protect and manage water resources; the development of regional water resource implementation programs; the construction, operation, and maintenance of major public works facilities to provide for flood control, surface and underground water storage, and ground water recharge augmentation; and related technical assistance to local governments and to government-owned and privately owned water utilities.
- (20) “Water resource implementation rule” means the rule authorized by s. 373.036, which sets forth goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives. The waters of the state are among its most basic resources. Such waters should be managed to conserve and protect water resources and to realize the full beneficial use of these resources.
- (21) “Water supply development” means the planning, design, construction, operation, and maintenance of public or private facilities for water collection, production, treatment, transmission, or distribution for sale, resale, or end use.
- (22) For the sole purpose of serving as the basis for the unified statewide methodology adopted pursuant to s. 373.421(1), as amended, “wetlands” means those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in

aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto. Upon legislative ratification of the methodology adopted pursuant to s. 373.421(1), as amended, the limitation contained herein regarding the purpose of this definition shall cease to be effective.

- (23) “Works of the district” means those projects and works, including, but not limited to, structures, impoundments, wells, streams, and other watercourses, together with the appurtenant facilities and accompanying lands, which have been officially adopted by the governing board of the district as works of the district.

History.--s. 3, part I, ch. 72-299; s. 37, ch. 79-65; s. 1, ch. 80-259; s. 5, ch. 82-101; s. 6, ch. 89-279; s. 21, ch. 93-213; s. 15, ch. 94-122; s. 251, ch. 94-356; s. 1, ch. 96-339; s. 1, ch. 96-370; s. 2, ch. 97-160.

<sup>1</sup>Note.--Former s. 373.194

### **373.033 Saltwater Barrier Line**

- (1) The department may, at the request of the board of county commissioners of any county, at the request of the governing board of any water management district, or any municipality or water district responsible for the protection of a public water supply, or, having determined by adoption of an appropriate resolution that saltwater intrusion has become a matter of emergency proportions, by its own initiative, establish generally along the seacoast, inland from the seashore and within the limits of the area within which the petitioning board has jurisdiction, a saltwater barrier line inland of which no canal shall be constructed or enlarged, and no natural stream shall be deepened or enlarged, which shall discharge into tidal waters without a dam, control structure or spillway at or seaward of the saltwater barrier line, which shall prevent the movement of salt water inland of the saltwater barrier line. Provided, however, that the department is authorized, in cases where saltwater intrusion is not a problem, to waive the requirement of a barrier structure by specific permit to construct a canal crossing the saltwater barrier line without a protective device and provided, further that the agency petitioning for the establishment of the saltwater barrier line shall concur in the waiver.
- (2) Application by a board of county commissioners or by the governing board of a water management district, a municipality or a water district for the establishment of a saltwater barrier line shall be made by adoption of an appropriate resolution, agreeing to:
  - (a) Reimburse the department the cost of necessary investigation, including, but not limited to, subsurface exploration by drilling, to determine the proper



location of the saltwater barrier line in that county or in all or part of the district over which the applying agency has jurisdiction.

- (b) Require compliance with the provisions of this law by county or district forces under their control; by those individuals or corporations filing plats for record and by individuals, corporations or agencies seeking authority to discharge surface or subsurface drainage into tidal waters.
- (3) The board of county commissioners of any county or the governing board of any water management district, municipality or water district desiring to establish a saltwater barrier line is authorized to reimburse the department for any expense entailed in making an investigation to determine the proper location of the saltwater barrier line, from any funds available to them for general administrative purposes.
- (4) The department, any board of county commissioners, and the governing board of any water management district, municipality, or water district having competent jurisdiction over an area in which a saltwater barrier is established shall be charged with the enforcement of the provisions of this section, and authority for the maintenance of actions set forth in s. 373.129 shall apply to this section.
- (5) The provisions of s. 373.191 shall apply specifically to the authority of the board of county commissioners, or to the governing board of a water management district, a municipality, or a water district having jurisdiction over an area in which a saltwater barrier line is established, to expend funds from whatever source may be available to them for the purpose of constructing saltwater barrier dams, dikes, and spillways within existing canals and streams in conformity with the purpose and intent of the board in establishing the saltwater barrier line.

History.--s. 2, ch. 63-210; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 14, ch. 78-95; s. 40, ch. 79-65; s. 85, ch. 79-164.

### **373.036 Florida water plan; district water management plans.--**

- (1) FLORIDA WATER PLAN.--In cooperation with the water management districts, regional water supply authorities, and others, the department shall develop the Florida water plan. The Florida water plan shall include, but not be limited to:
  - (a) The programs and activities of the department related to water supply, water quality, flood protection and floodplain management, and natural systems.
  - (b) The water quality standards of the department.
  - (c) The district water management plans.
  - (d) Goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives. The state water policy rule, renamed the water resource implementation rule pursuant to s. 373.019(2), shall serve as this part of the plan. Amendments or additions to this part of the Florida water plan shall be adopted by the department as part of the water resource implementation rule. In accordance with s. 373.114, the department shall

review rules of the water management districts for consistency with this rule. Amendments to the water resource implementation rule must be adopted by the secretary of the department and be submitted to the President of the Senate and the Speaker of the House of Representatives within 7 days after publication in the Florida Administrative Weekly. Amendments shall not become effective until the conclusion of the next regular session of the Legislature following their adoption.

(2) DISTRICT WATER MANAGEMENT PLANS.--

- (a) Each governing board shall develop a district water management plan for water resources within its region, which plan addresses water supply, water quality, flood protection and floodplain management, and natural systems. The district water management plan shall be based on at least a 20-year planning period, shall be developed and revised in cooperation with other agencies, regional water supply authorities, units of government, and interested parties, and shall be updated at least once every 5 years. The governing board shall hold a public hearing at least 30 days in advance of completing the development or revision of the district water management plan.
- (b) The district water management plan shall include, but not be limited to:
  - 1. The scientific methodologies for establishing minimum flows and levels under s. 373.042, and all established minimum flows and levels.
  - 2. Identification of one or more water supply planning regions that singly or together encompass the entire district.
  - 3. Technical data and information prepared under ss. 373.0391 and 373.0395.
  - 4. A districtwide water supply assessment, to be completed no later than July 1, 1998, which determines for each water supply planning region:
    - a. Existing legal uses, reasonably anticipated future needs, and existing and reasonably anticipated sources of water and conservation efforts; and
    - b. Whether existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water for all existing legal uses and reasonably anticipated future needs and to sustain the water resources and related natural systems.
  - 5. Any completed regional water supply plans.
- (c) If necessary for implementation, the governing board shall adopt by rule or order relevant portions of the district water management plan, to the extent of its statutory authority.
- (d) In the formulation of the district water management plan, the governing board shall give due consideration to:
  - 1. The attainment of maximum reasonable-beneficial use of water resources.
  - 2. The maximum economic development of the water resources consistent with other uses.

3. The management of water resources for such purposes as environmental protection, drainage, flood control, and water storage.
  4. The quantity of water available for application to a reasonable-beneficial use.
  5. The prevention of wasteful, uneconomical, impractical, or unreasonable uses of water resources.
  6. Presently exercised domestic use and permit rights.
  7. The preservation and enhancement of the water quality of the state.
  8. The state water resources policy as expressed by this chapter.
- (3) The department and governing board shall give careful consideration to the requirements of public recreation and to the protection and procreation of fish and wildlife. The department or governing board may prohibit or restrict other future uses on certain designated bodies of water which may be inconsistent with these objectives.
  - (4) The governing board may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would constitute an undesirable use for which the governing board may deny a permit.
  - (5) The governing board may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would result in an enhancement or improvement of the water resources of the area. Such uses shall be preferred over other uses in the event of competing applications under the permitting systems authorized by this chapter.
  - (6) The department, in cooperation with the Executive Office of the Governor, or its successor agency, may add to the Florida water plan any other information, directions, or objectives it deems necessary or desirable for the guidance of the governing boards or other agencies in the administration and enforcement of this chapter.

History.--s. 6, part I, ch. 72-299; ss. 2, 3, ch. 73-190; s. 122, ch. 79-190; s. 3, ch. 97-160; s. 7, ch. 98-88.

### **373.0361 Regional water supply planning.--**

- (1) By October 1, 1998, the governing board shall initiate water supply planning for each water supply planning region identified in the district water management plan under s. 373.036, where it determines that sources of water are not adequate for the planning period to supply water for all existing and projected reasonable-beneficial uses and to sustain the water resources and related natural systems. The planning must be conducted in an open public process, in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately owned water utilities, self-suppliers, and other affected and interested parties. A determination by the governing board that initiation of a regional water supply plan for a specific planning region is not needed pursuant to this section shall be subject to s. 120.569. The governing

board shall reevaluate such a determination at least once every 5 years and shall initiate a regional water supply plan, if needed, pursuant to this subsection.

- (2) Each regional water supply plan shall be based on at least a 20-year planning period and shall include, but not be limited to:
  - (a) A water supply development component that includes:
    1. A quantification of the water supply needs for all existing and reasonably projected future uses within the planning horizon. The level-of-certainty planning goal associated with identifying the water supply needs of existing and future reasonable-beneficial uses shall be based upon meeting those needs for a 1-in-10-year drought event.
    2. A list of water source options for water supply development, including traditional and alternative sources, from which local government, government-owned and privately owned utilities, self-suppliers, and others may choose, which will exceed the needs identified in subparagraph 1.
    3. For each option listed in subparagraph 2., the estimated amount of water available for use and the estimated costs of and potential sources of funding for water supply development.
    4. A list of water supply development projects that meet the criteria in s. 373.0831(4).
  - (b) A water resource development component that includes:
    1. A listing of those water resource development projects that support water supply development.
    2. For each water resource development project listed:
      - a. An estimate of the amount of water to become available through the project.
      - b. The timetable for implementing or constructing the project and the estimated costs for implementing, operating, and maintaining the project.
      - c. Sources of funding and funding needs.
      - d. Who will implement the project and how it will be implemented.
  - (c) The recovery and prevention strategy described in s. 373.0421(2).
  - (d) A funding strategy for water resource development projects, which shall be reasonable and sufficient to pay the cost of constructing or implementing all of the listed projects.
  - (e) Consideration of how the options addressed in paragraphs (a) and (b) serve the public interest or save costs overall by preventing the loss of natural resources or avoiding greater future expenditures for water resource development or water supply development. However, unless adopted by rule, these considerations do not constitute final agency action.
  - (f) The technical data and information applicable to the planning region which are contained in the district water management plan and are necessary to support the regional water supply plan.

- (g) The minimum flows and levels established for water resources within the planning region.
- (3) Regional water supply plans initiated or completed by July 1, 1997, shall be revised, if necessary, to include a water supply development component and a water resource development component as described in paragraphs (2)(a) and (b).
- (4) Governing board approval of a regional water supply plan shall not be subject to the rulemaking requirements of chapter 120. However, any portion of an approved regional water supply plan which affects the substantial interests of a party shall be subject to s. 120.569.
- (5) By November 15, 1997, and annually thereafter, the department shall submit to the Governor and the Legislature a report on the status of regional water supply planning in each district. The report shall include:
  - (a) A compilation of the estimated costs of and potential sources of funding for water resource development and water supply development projects, as identified in the water management district regional water supply plans.
  - (b) A description of each district's progress toward achieving its water resource development objectives, as directed by s. 373.0831(3), including the district's implementation of its 5-year water resource development work program.
- (6) Nothing contained in the water supply development component of the district water management plan shall be construed to require local governments, government-owned or privately owned water utilities, self-suppliers, or other water suppliers to select a water supply development option identified in the component merely because it is identified in the plan. However, this subsection shall not be construed to limit the authority of the department or governing board under part II.

History.--s. 4, ch. 97-160.

### **373.0391 Technical Assistance to Local Governments**

- (1) The water management districts shall assist local governments in the development and future revision of local government comprehensive plan elements or public facilities report as required by s. 189.415, related to water resource issues.
- (2) By July 1, 1991, each water management district shall prepare and provide information and data to assist local governments in the preparation and implementation of their local government comprehensive plans or public facilities report as required by s. 189.415, whichever is applicable. Such information and data shall include, but not be limited to:
  - (a) All information and data required in a public facilities report pursuant to s. 189.415.

- (b) A description of regulations, programs, and schedules implemented by the district.
- (c) Identification of regulations, programs, and schedules undertaken or proposed by the district to further the State Comprehensive Plan.
- (d) A description of surface water basins, including regulatory jurisdictions, flood-prone areas, existing and projected water quality in water management district operated facilities, as well as surface water runoff characteristics and topography regarding flood plains, wetlands, and recharge areas.
- (e) A description of ground water characteristics, including existing and planned wellfield sites, existing and anticipated cones of influence, highly productive ground water areas, aquifer recharge areas, deep well injection zones, contaminated areas, an assessment of regional water resource needs and sources for the next 20 years, and water quality.
- (f) The identification of existing and potential water management district land acquisitions.
- (g) Information reflecting the minimum flows for surface watercourses to avoid harm to water resources or the ecosystem and information reflecting the minimum water levels for aquifers to avoid harm to water resources or the ecosystem.

History.--s. 55, ch. 89-169; s. 8, ch. 89-279.

### **373.0395 Ground water basin resource availability inventory.—**

Each water management district shall develop a ground water basin resource availability inventory covering those areas deemed appropriate by the governing board. This inventory shall include, but not be limited to, the following:

- (1) A hydrogeologic study to define the ground water basin and its associated recharge areas.
- (2) Site specific areas in the basin deemed prone to contamination or overdraft resulting from current or projected development.
- (3) Prime ground water recharge areas.
- (4) Criteria to establish minimum seasonal surface and ground water levels.
- (5) Areas suitable for future water resource development within the ground water basin.
- (6) Existing sources of wastewater discharge suitable for reuse as well as the feasibility of integrating coastal wellfields.
- (7) Potential quantities of water available for consumptive uses.

Upon completion, a copy of the ground water basin availability inventory shall be submitted to each affected municipality, county, and regional planning agency. This inventory shall be reviewed by the affected municipalities, counties, and regional planning agencies

for consistency with the local government comprehensive plan and shall be considered in future revisions of such plan. It is the intent of the Legislature that future growth and development planning reflect the limitations of the available ground water or other available water supplies.

History.--s. 6, ch. 82-101.

**373.0397 Floridan and Biscayne aquifers; designation of prime ground water recharge areas.—**

Upon preparation of an inventory of prime ground water recharge areas for the Floridan or Biscayne aquifers as a part of the requirements of s. 373.0395(3), but prior to adoption by the governing board, the water management district shall publish a legal notice of public hearing on the designated areas for the Floridan and Biscayne aquifers, with a map delineating the boundaries of the areas, in newspapers defined in chapter 50 as having general circulation within the area to be affected. The notice shall be at least one-fourth page and shall read as follows:

**NOTICE OF PRIME RECHARGE  
AREA DESIGNATION**

The (name of taxing authority) proposes to designate specific land areas as areas of prime recharge to the (name of aquifer) Aquifer.

All concerned citizens are invited to attend a public hearing on the proposed designation to be held on (date and time) at (meeting place).

A map of the affected areas follows.

The governing board of the water management district shall adopt a designation of prime ground water recharge areas to the Floridan and Biscayne aquifers by rule within 120 days after the public hearing, subject to the provisions of chapter 120.

History.--s. 2, ch. 85-42.

**373.042 Minimum Flows and Levels**

- (1) Within each section, or the water management district as a whole, the department or the governing board shall establish the following:
  - (a) Minimum flow for all surface watercourses in the area. The minimum flow for a given watercourse shall be the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.
  - (b) Minimum water level. The minimum water level shall be the level of ground water in an aquifer and the level of surface water at which further withdrawals would be significantly harmful to the water resources of the area.

The minimum flow and minimum water level shall be calculated by the department and the governing board using the best information available. When appropriate, minimum flows and levels may be calculated to reflect seasonal variations. The department and the governing board shall also consider, and at their discretion may provide for, the protection of nonconsumptive uses in the establishment of minimum flows and levels.

(4)

- (a) Upon written request to the department or governing board by a substantially affected person, or by decision of the department or governing board, prior to the establishment of a minimum flow or level and prior to the filing of any petition for administrative hearing related to the minimum flow or level, all scientific or technical data, methodologies, and models, including all scientific and technical assumptions employed in each model, used to establish a minimum flow or level shall be subject to independent scientific peer review. Independent scientific peer review means review by a panel of independent, recognized experts in the fields of hydrology, hydrogeology, limnology, biology, and other scientific disciplines, to the extent relevant to the establishment of the minimum flow or level.
- (b) If independent scientific peer review is requested, it shall be initiated at an appropriate point agreed upon by the department or governing board and the person or persons requesting the peer review. If no agreement is reached, the department or governing board shall determine the appropriate point at which to initiate peer review. The members of the peer review panel shall be selected within 60 days of the point of initiation by agreement of the department or governing board and the person or persons requesting the peer review. If the panel is not selected within the 60-day period, the time limitation may be waived upon the agreement of all parties. If no waiver occurs, the department or governing board may proceed to select the peer review panel. The cost of the peer review shall be borne equally by the district and each party requesting the peer review, to the extent economically feasible. The panel shall submit a final report to the governing board within 120 days after its selection unless the deadline is waived by agreement of all parties. Initiation of peer review pursuant to this paragraph shall toll any applicable deadline under chapter 120 or other law or district rule regarding permitting, rulemaking, or administrative hearings, until 60 days following submittal of the final report. Any such deadlines shall also be tolled for 60 days following withdrawal of the request or following agreement of the parties that peer review will no longer be pursued. The department or the governing board shall give significant weight to the final report of the peer review panel when establishing the minimum flow or level.
- (c) If the final data, methodologies, and models, including all scientific and technical assumptions employed in each model upon which a minimum flow or level is based, have undergone peer review pursuant to this subsection, by request or by decision of the department or governing board, no further peer review shall be required with respect to that minimum flow or level.



- (d) No minimum flow or level adopted by rule or formally noticed for adoption on or before May 2, 1997, shall be subject to the peer review provided for in this subsection.
- (5) If a petition for administrative hearing is filed under chapter 120 challenging the establishment of a minimum flow or level, the report of an independent scientific peer review conducted under subsection (4) is admissible as evidence in the final hearing, and the administrative law judge must render the order within 120 days after the filing of the petition. The time limit for rendering the order shall not be extended except by agreement of all the parties. To the extent that the parties agree to the findings of the peer review, they may stipulate that those findings be incorporated as findings of fact in the final order.

History.--s. 6, part I, ch. 72-299; s. 2, ch. 73-190; s. 2, ch. 96-339; s. 5, ch. 97-160.

### **373.0421 Establishment and implementation of minimum flows and levels.--**

#### **(1) ESTABLISHMENT.--**

- (a) Considerations.--When establishing minimum flows and levels pursuant to s. 373.042, the department or governing board shall consider changes and structural alterations to watersheds, surface waters, and aquifers and the effects such changes or alterations have had, and the constraints such changes or alterations have placed, on the hydrology of an affected watershed, surface water, or aquifer, provided that nothing in this paragraph shall allow significant harm as provided by s. 373.042(1) caused by withdrawals.
- (b) Exclusions.--
  1. The Legislature recognizes that certain water bodies no longer serve their historical hydrologic functions. The Legislature also recognizes that recovery of these water bodies to historical hydrologic conditions may not be economically or technically feasible, and that such recovery effort could cause adverse environmental or hydrologic impacts. Accordingly, the department or governing board may determine that setting a minimum flow or level for such a water body based on its historical condition is not appropriate.
  2. The department or the governing board is not required to establish minimum flows or levels pursuant to s. 373.042 for surface water bodies less than 25 acres in area, unless the water body or bodies, individually or cumulatively, have significant economic, environmental, or hydrologic value.
  3. The department or the governing board shall not set minimum flows or levels pursuant to s. 373.042 for surface water bodies constructed prior to the requirement for a permit, or pursuant to an exemption, a permit, or a reclamation plan which regulates the size, depth, or function of the surface water body under the provisions of this chapter, chapter 378, or chapter 403, unless the constructed surface water body is of significant

hydrologic value or is an essential element of the water resources of the area.

The exclusions of this paragraph shall not apply to the Everglades Protection Area, as defined in s. 373.4592(2)(h).

- (2) If the existing flow or level in a water body is below, or is projected to fall within 20 years below, the applicable minimum flow or level established pursuant to s. 373.042, the department or governing board, as part of the regional water supply plan described in s. 373.036<sup>1</sup>, shall expeditiously implement a recovery or prevention strategy, which includes the development of additional water supplies and other actions, consistent with the authority granted by this chapter, to:
  - (a) Achieve recovery to the established minimum flow or level as soon as practicable; or
  - (b) Prevent the existing flow or level from falling below the established minimum flow or level.

The recovery or prevention strategy shall include phasing or a timetable which will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including development of additional water supplies and implementation of conservation and other efficiency measures concurrent with, to the extent practical, and to offset, reductions in permitted withdrawals, consistent with the provisions of this chapter.

- (3) The provisions of this section are supplemental to any other specific requirements or authority provided by law. Minimum flows and levels shall be reevaluated periodically and revised as needed.

History.--s. 6, ch. 97-160.

<sup>1</sup>Note.--Former s. 378.16.

### **373.0831 Water resource development; water supply development.--**

- (1) The Legislature finds that:
  - (a) The proper role of the water management districts in water supply is primarily planning and water resource development, but this does not preclude them from providing assistance with water supply development.
  - (b) The proper role of local government, regional water supply authorities, and government-owned and privately owned water utilities in water supply is primarily water supply development, but this does not preclude them from providing assistance with water resource development.
  - (c) Water resource development and water supply development must receive priority attention, where needed, to increase the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems.

- (2) It is the intent of the Legislature that:
  - (a) Sufficient water be available for all existing and future reasonable-beneficial uses and the natural systems, and that the adverse effects of competition for water supplies be avoided.
  - (b) Water management districts take the lead in identifying and implementing water resource development projects, and be responsible for securing necessary funding for regionally significant water resource development projects.
  - (c) Local governments, regional water supply authorities, and government-owned and privately owned water utilities take the lead in securing funds for and implementing water supply development projects. Generally, direct beneficiaries of water supply development projects should pay the costs of the projects from which they benefit, and water supply development projects should continue to be paid for through local funding sources.
  - (d) Water supply development be conducted in coordination with water management district regional water supply planning and water resource development.
- (3) The water management districts shall fund and implement water resource development as defined in s. 373.019. Each governing board shall include in its annual budget the amount needed for the fiscal year to implement water resource development projects, as prioritized in its regional water supply plans.
- (4)
  - (a) Water supply development projects which are consistent with the relevant regional water supply plans and which meet one or more of the following criteria shall receive priority consideration for state or water management district funding assistance:
    - 1. The project supports establishment of a dependable, sustainable supply of water which is not otherwise financially feasible;
    - 2. The project provides substantial environmental benefits by preventing or limiting adverse water resource impacts, but requires funding assistance to be economically competitive with other options; or
    - 3. The project significantly implements reuse, storage, recharge, or conservation of water in a manner that contributes to the sustainability of regional water sources.
  - (b) Water supply development projects which meet the criteria in paragraph (a) and also bring about replacement of existing sources in order to help implement a minimum flow or level shall be given first consideration for state or water management district funding assistance.

History.--s. 11, ch. 97-160.

### **373.086 Providing for District Works**

- (1) In order to carry out the works for the district, and for effectuating the purposes of this chapter, the governing board is authorized to clean out, straighten,

enlarge, or change the course of any waterway, natural or artificial, within or without the district; to provide such canals, levees, dikes, dams, sluiceways, reservoirs, holding basins, floodways, pumping stations, bridges, highways, and other works and facilities which the board may deem necessary; to establish, maintain, and regulate water levels in all canals, lakes, rivers, channels, reservoirs, streams, or other bodies of water owned or maintained by the district; to cross any highway or railway with works of the district and to hold, control, and acquire by donation, lease, or purchase, or to condemn any land, public or private, needed for rights-of-way or other purposes, and may remove any building or other obstruction necessary for the construction, maintenance, and operation of the works; and to hold and have full control over the works and rights-of-way of the district.

- (2) The works of the district shall be those adopted by the governing board of the district. The district may require or take over for operation and maintenance such works of other districts as the governing board may deem advisable under agreement with such districts.
- (3)
  - (a) Notwithstanding the provisions of chapter 120, the temporary construction, operation, or maintenance of water supply backpumping facilities to be used for storage of surplus water shall not require a permit under this chapter, chapter 253, or chapter 403 from the Department of Environmental Protection if the governing board issues an order declaring a water emergency which order is approved by the Secretary of Environmental Protection. Such approval may be given by telephone and confirmed by appropriate order at a later date. The temporary construction, operation, or maintenance of the facilities shall cease when the governing board or the secretary issues an order declaring that the emergency no longer exists. If the district intends to operate any such facilities permanently under nonemergency conditions, it shall apply for the appropriate required permits from the Department of Environmental Protection within 30 days of rescinding the emergency order.
  - (b) Notwithstanding the provisions of chapter 120, emergency orders issued pursuant to this subsection shall be valid for a period of 90 days and may be renewed for a single 90-day period.

History.--s. 16, ch. 25209, 1949; s. 2, ch. 29790, 1955; s. 1, ch. 61-147; s. 3, ch. 61-497; s. 2, ch. 63-224; s. 1, ch. 67-206; s. 1, part VI, ch. 72-299; s. 25, ch. 73-190; s. 1, ch. 82-46; s. 4, ch. 82-101; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217; s. 255, ch. 94-356.

**373.087 District works using aquifer for storage and supply.—**

The governing board may establish works of the district for the purpose of introducing water into, or drawing water from, the underlying aquifer for storage or supply. However, only water of a compatible quality shall be introduced directly into such aquifer.

History.--s. 1, ch. 72-318; s. 1, ch. 82-46; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217.

**373.106 Permit Required for Construction Involving Underground Formation**

- 1) No construction may be begun on a project involving artificial recharge or the intentional introduction of water into any underground formation except as permitted in chapter 377, without the written permission of the governing board of any water management district within which the construction will take place. Such application shall contain the detailed plans and specifications for the construction of the project.
- 2) Each water management district has the exclusive authority to process and issue permits under this section and permits and licenses delegated under s. 403.812, except permits required by the department pursuant to 42 U.S.C. s. 300h until delegated by the department to the districts.
- (3) A water management district may do any act necessary to replenish the ground water of the district. The district may, among other things, for the purposes of replenishing the ground water supplies within the district:
  - (a) Buy water;
  - (b) Exchange water;
  - (c) Distribute water to persons in exchange for ceasing or reducing ground water extractions;
  - (d) Spread, sink, and inject water into the underground;
  - (e) Store, transport, recapture, reclaim, purify, treat, or otherwise manage and control water for the beneficial use of persons or property within the district; and
  - (f) Build the necessary works to achieve ground water replenishment.

History.--s. 18, part I, ch. 72-299; s. 14, ch. 78-95; s. 71, ch. 83-310; s. 2, ch. 84-338; s. 1, ch. 84-341.

**373.171 Rules and Regulations**

- (1) In order to obtain the most beneficial use of the water resources of the state and to protect the public health, safety, and welfare and the interests of the water users affected, governing boards, by action not inconsistent with the other provisions of this law and without impairing property rights, may:

- (a) Establish rules, regulations, or orders affecting the use of water, as conditions warrant, and forbidding the construction of new diversion facilities or wells, the initiation of new water uses, or the modification of any existing uses, diversion facilities, or storage facilities within the affected area.
  - (b) Regulate the use of water within the affected area by apportioning, limiting, or rotating uses of water or by preventing those uses which the governing board finds have ceased to be reasonable or beneficial.
  - (c) Make other rules, regulations, and orders necessary for the preservation of the interests of the public and of affected water users.
- (2) In promulgating rules and regulations and issuing orders under this law, the governing board shall act with a view to full protection of the existing rights to water in this state insofar as is consistent with the purpose of this law.
  - (3) No rule, regulation or order shall require any modification of existing use or disposition of water in the district unless it is shown that the use or disposition proposed to be modified is detrimental to other water users or to the water resources of the state.
  - (4) All rules and regulations adopted by the governing board shall be filed with the Department of State as provided in chapter 120. An information copy will be filed with the Department of Environmental Protection.

History.--s. 11, ch. 57-380; s. 8, ch. 63-336; ss. 10, 25, 35, ch. 69-106; s. 8, ch. 76-243; s. 1, ch. 77-117; s. 14, ch. 78-95; s. 256, ch. 94-356.

### **373.175 Declaration of Water Shortage; Emergency Orders<sup>1</sup>**

- (1) The governing board of the district may by order declare that a water shortage exists within all or part of the district when insufficient ground or surface water is available to meet the needs of the users or when conditions are such as to require temporary reduction in total use within the area to protect water resources from serious harm.
- (2) The governing board may impose such restrictions on one or more users of the water resource as may be necessary to protect the water resources of the area from serious harm.
- (3) When a water shortage is declared, the governing board shall cause notice thereof to be published in a prominent place within a newspaper of general circulation throughout the area. Publication of such notice shall serve as notice to all users in the area of the condition of water shortage.
- (4) If an emergency condition exists due to a water shortage within any area of the district and the executive director of the district, with the concurrence of the governing board, finds that the exercise of powers under this section is not sufficient to protect the public health, safety, or welfare, the health of animals, fish, or aquatic life, a public water supply, or recreational, commercial, industrial, agricultural, or other reasonable uses, the executive director may, pursuant to the provisions of chapter 120, issue emergency orders reciting the

existence of such an emergency and requiring that such action, including, but not limited to, apportioning, rotating, limiting, or prohibiting the use of the water resources of the district, be taken as the executive director, with the concurrence of the governing board, deems necessary to meet the emergency.

History.--s. 1, ch. 72-730; s. 25, ch. 73-190; s. 1, ch. 73-295; s. 14, ch. 78-95; s. 35, ch. 83-218; s. 597, ch. 95-148.

<sup>1</sup>Note.--Former s. 378.152.

### **373.185 Local Xeriscape ordinances.--**

- 1) As used in this section, the term:
  - (a) "Local government" means any county or municipality of the state.
  - (b) "Xeriscape" means a landscaping method that maximizes the conservation of water by the use of site-appropriate plants and an efficient watering system. The principles of Xeriscape include planning and design, appropriate choice of plants, soil analysis which may include the use of solid waste compost, efficient irrigation, practical use of turf, appropriate use of mulches, and proper maintenance.
- (2) Each water management district shall design and implement an incentive program to encourage all local governments within its district to adopt new ordinances or amend existing ordinances to require Xeriscape landscaping for development permitted after the effective date of the new ordinance or amendment. Each district shall adopt rules governing the implementation of its incentive program and governing the review and approval of local government Xeriscape ordinances or amendments which are intended to qualify a local government for the incentive program. Each district shall assist the local governments within its jurisdiction by providing a model Xeriscape code and other technical assistance. A local government Xeriscape ordinance or amendment, in order to qualify the local government for a district's incentive program, must include, at a minimum:
  - (a) Landscape design, installation, and maintenance standards that result in water conservation. Such standards shall address the use of plant groupings, soil analysis including the promotion of the use of solid waste compost, efficient irrigation systems, and other water-conserving practices.
  - (b) Identification of prohibited invasive exotic plant species.
  - (c) Identification of controlled plant species, accompanied by the conditions under which such plants may be used.
  - (d) A provision specifying the maximum percentage of turf and the maximum percentage of impervious surfaces allowed in a xeriscaped area and addressing the practical selection and installation of turf.
  - (e) Specific standards for land clearing and requirements for the preservation of existing native vegetation.
  - (f) A monitoring program for ordinance implementation and compliance.

The districts also shall work with local governments to promote, through educational programs and publications, the use of Xeriscape practices, including the use of solid waste compost, in existing residential and commercial development. This section may not be construed to limit the authority of the districts to require Xeriscape ordinances or practices as a condition of any consumptive use permit.

History.--s. 3, ch. 91-41; s. 3, ch. 91-68.

### **373.191 County water conservation projects.—**

The several counties of the state may cooperate with the division<sup>1</sup> by engaging in county water development and conservation projects and may use county funds and equipment for this purpose and to do all other things necessary in connection with the development and conservation of the county's water resources consistent with the provisions of this law and the rules and regulations adopted pursuant thereto.

History.--s. 13, ch. 57-380; ss. 25, 35, ch. 69-106.

<sup>1</sup>Note.--Former s. 373.081(1), which defined the word "division" as the Division of Interior Resources of the Department of Natural Resources, was repealed by s. 1, pt. VI, ch. 72-299.

### **373.196 Legislative findings.--**

- (1) It is the finding of the Legislature that cooperative efforts between municipalities, counties, water management districts, and the Department of Environmental Protection are mandatory in order to meet the water needs of rapidly urbanizing areas in a manner which will supply adequate and dependable supplies of water where needed without resulting in adverse effects upon the areas from whence such water is withdrawn. Such efforts should utilize all practical means of obtaining water, including, but not limited to, withdrawals of surface water and ground water, recycling of waste water, and desalinization, and will necessitate not only cooperation but also well-coordinated activities. The purpose of this act is to provide additional statutory authority for such cooperative and coordinated efforts.
- (2) Municipalities and counties are encouraged to create regional water supply authorities as authorized herein. It is further the intent that municipalities, counties, and regional water supply authorities are to have the primary responsibility for water supply, and water management districts and their basin boards are to engage only in those functions that are incidental to the exercise of their flood control and water management powers or that are related to water resource development pursuant to s. 373.0831.
- (3) Nothing herein shall be construed to preclude the various municipalities and counties from continuing to operate existing water production and transmission facilities or to enter into cooperative agreements with other municipalities and counties for the purpose of meeting their respective needs for dependable and



adequate supplies of water, provided the obtaining of water through such operations shall not be done in a manner which results in adverse effects upon the areas from whence such water is withdrawn.

History.--s. 1, ch. 74-114; s. 43, ch. 79-65; s. 257, ch. 94-356; s. ch. 98-88.

### **373.1961 Water production.--**

- (1) In the performance of, and in conjunction with, its other powers and duties, the governing board of a water management district existing pursuant to this chapter:
  - (a) Shall engage in planning to assist counties, municipalities, private utilities, or regional water supply authorities in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas. As used in this section, regional water supply authorities are regional water authorities created under s. 373.1962 or other laws of this state.
  - (b) Shall assist counties, municipalities, private utilities, or water supply authorities in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas.
  - (c) May establish, design, construct, operate, and maintain water production and transmission facilities for the purpose of supplying water to counties, municipalities, private utilities, or regional water supply authorities. The permit required by part II of this chapter for a water management district engaged in water production and transmission shall be granted, denied, or granted with conditions by the department.
  - (d) Shall not engage in local distribution.
  - (e) Shall not deprive, directly or indirectly, any county wherein water is withdrawn of the prior right to the reasonable and beneficial use of water which is required to supply adequately the reasonable and beneficial needs of the county or any of the inhabitants or property owners therein.
  - (f) May provide water and financial assistance to regional water supply authorities, but may not provide water to counties and municipalities which are located within the area of such authority without the specific approval of the authority or, in the event of the authority's disapproval, the approval of the Governor and Cabinet sitting as the Land and Water Adjudicatory Commission. The district may supply water at rates and upon terms mutually agreed to by the parties or, if they do not agree, as set by the governing board and specifically approved by the Governor and Cabinet sitting as the Land and Water Adjudicatory Commission.
  - (g) May acquire title to such interest as is necessary in real property, by purchase, gift, devise, lease, eminent domain, or otherwise, for water production and transmission consistent with this section. However, the district shall not use any of the eminent domain powers herein granted to

acquire water and water rights already devoted to reasonable and beneficial use or any water production or transmission facilities owned by any county, municipality, or regional water supply authority. The district may exercise eminent domain powers outside of its district boundaries for the acquisition of pumpage facilities, storage areas, transmission facilities, and the normal appurtenances thereto, provided that at least 45 days prior to the exercise of eminent domain, the district notifies the district where the property is located after public notice and the district where the property is located does not object within 45 days after notification of such exercise of eminent domain authority.

- (h) In addition to the power to issue revenue bonds pursuant to s. 373.584, may issue revenue bonds for the purposes of paying the costs and expenses incurred in carrying out the purposes of this chapter or refunding obligations of the district issued pursuant to this section. Such revenue bonds shall be secured by, and be payable from, revenues derived from the operation, lease, or use of its water production and transmission facilities and other water-related facilities and from the sale of water or services relating thereto. Such revenue bonds may not be secured by, or be payable from, moneys derived by the district from the Water Management Lands Trust Fund or from ad valorem taxes received by the district. All provisions of s. 373.584 relating to the issuance of revenue bonds which are not inconsistent with this section shall apply to the issuance of revenue bonds pursuant to this section. The district may also issue bond anticipation notes in accordance with the provisions of s. 373.584.
  - (i) May join with one or more other water management districts, counties, municipalities, private utilities, or regional water supply authorities for the purpose of carrying out any of its powers, and may contract with such other entities to finance acquisitions, construction, operation, and maintenance. The contract may provide for contributions to be made by each party thereto, for the division and apportionment of the expenses of acquisitions, construction, operation, and maintenance, and for the division and apportionment of the benefits, services, and products therefrom. The contracts may contain other covenants and agreements necessary and appropriate to accomplish their purposes.
- (2) The Legislature finds that, due to a combination of factors, vastly increased demands have been placed on natural supplies of fresh water, and that, absent increased development of alternative water supplies, such demands may increase in the future. The Legislature also finds that potential exists in the state for the production of significant quantities of alternative water supplies, including reclaimed water, and that water production includes the development of alternative water supplies, including reclaimed water, for appropriate uses. It is the intent of the Legislature that utilities develop reclaimed water systems, where reclaimed water is the most appropriate alternative water supply option, to deliver reclaimed water to as many users as possible through the most cost-effective means, and to construct reclaimed water system infrastructure to their owned or operated properties and facilities where they have reclamation

capability. It is also the intent of the Legislature that the water management districts which levy ad valorem taxes for water management purposes should share a percentage of those tax revenues with water providers and users, including local governments, water, wastewater, and reuse utilities, municipal, industrial, and agricultural water users, and other public and private water users, to be used to supplement other funding sources in the development of alternative water supplies. The Legislature finds that public moneys or services provided to private entities for such uses constitute public purposes which are in the public interest. In order to further the development and use of alternative water supply systems, including reclaimed water systems, the Legislature provides the following:

- (a) The governing boards of the water management districts where water resource caution areas have been designated shall include in their annual budgets an amount for the development of alternative water supply systems, including reclaimed water systems, pursuant to the requirements of this subsection. Beginning in 1996, such amounts shall be made available to water providers and users no later than December 31 of each year, through grants, matching grants, revolving loans, or the use of district lands or facilities pursuant to the requirements of this subsection and guidelines established by the districts.
- (b) It is the intent of the Legislature that for each reclaimed water utility, or any other utility, which receives funds pursuant to this subsection, the appropriate rate-setting authorities should develop rate structures for all water, wastewater, and reclaimed water and other alternative water supply utilities in the service area of the funded utility, which accomplish the following:
  - 1. Provide meaningful progress toward the development and implementation of alternative water supply systems, including reclaimed water systems;
  - 2. Promote the conservation of fresh water withdrawn from natural systems;
  - 3. Provide for an appropriate distribution of costs for all water, wastewater, and alternative water supply utilities, including reclaimed water utilities, among all of the users of those utilities; and
  - 4. Prohibit rate discrimination within classes of utility users.
- (c) In order to be eligible for funding pursuant to this subsection, a project must be consistent with a local government comprehensive plan and the governing body of the local government must require all appropriate new facilities within the project's service area to connect to and use the project's alternative water supplies. The appropriate local government must provide written notification to the appropriate district that the proposed project is consistent with the local government comprehensive plan.
- (d) Any and all revenues disbursed pursuant to this subsection shall be applied only for the payment of capital or infrastructure costs for the construction of alternative water supply systems that provide alternative water supplies for uses within one or more water resource caution areas.

- (e) By January 1 of each year, the governing boards shall make available written guidelines for the disbursal of revenues pursuant to this subsection. Such guidelines shall include at minimum:
  - 1. An application process and a deadline for filing applications annually.
  - 2. A process for determining project eligibility pursuant to the requirements of paragraphs (c) and (d).
  - 3. A process and criteria for funding projects pursuant to this subsection that cross district boundaries or that serve more than one district.
- (f) The governing board of each water management district shall establish an alternative water supplies grants advisory committee to recommend to the governing board projects for funding pursuant to this subsection. The advisory committee members shall include, but not be limited to, one or more representatives of county, municipal, and investor-owned private utilities, and may include, but not be limited to, representatives of agricultural interests and environmental interests. Each committee member shall represent his or her interest group as a whole and shall not represent any specific entity. The committee shall apply the guidelines and project eligibility criteria established by the governing board in reviewing proposed projects. After one or more hearings to solicit public input on eligible projects, the committee shall rank the eligible projects and shall submit them to the governing board for final funding approval. The advisory committee may submit to the governing board more projects than the available grant money would fund.
- (g) All revenues made available annually pursuant to this subsection must be disbursed annually by the governing board if it approves projects sufficient to expend the available revenues.
- (h) For purposes of this subsection, alternative water supplies are supplies of water that have been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses, or are supplies of stormwater, or brackish or salt water, that have been treated in accordance with applicable rules and standards sufficient to supply the intended use.
- (i) This subsection shall not be subject to the rulemaking requirements of chapter 120.
- (j) By January 30 of each year, each water management district shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which accounts for the disbursal of all budgeted amounts pursuant to this subsection. Such report shall describe all projects funded and shall account separately for moneys provided through grants, matching grants, revolving loans, and the use of district lands or facilities.

History.--s. 2, ch. 74-114; s. 14, ch. 76-243; s. 7, ch. 82-101; s. 2, ch. 87-347; s. 7, ch. 95-323.

**373.1962 Regional water supply authorities.--**

- (1) By agreement between local governmental units created or existing pursuant to the provisions of Art. VIII of the State Constitution, pursuant to the Florida Interlocal Cooperation Act of 1969, s. 163.01, and upon the approval of the Secretary of Environmental Protection to ensure that such agreement will be in the public interest and complies with the intent and purposes of this act, regional water supply authorities may be created for the purpose of developing, recovering, storing, and supplying water for county or municipal purposes in such a manner as will give priority to reducing adverse environmental effects of excessive or improper withdrawals of water from concentrated areas. In approving said agreement the Secretary of Environmental Protection shall consider, but not be limited to, the following:
  - (a) Whether the geographic territory of the proposed authority is of sufficient size and character to reduce the environmental effects of improper or excessive withdrawals of water from concentrated areas.
  - (b) The maximization of economic development of the water resources within the territory of the proposed authority.
  - (c) The availability of a dependable and adequate water supply.
  - (d) The ability of any proposed authority to design, construct, operate, and maintain water supply facilities in the locations, and at the times necessary, to ensure that an adequate water supply will be available to all citizens within the authority.
  - (e) The effect or impact of any proposed authority on any municipality, county, or existing authority or authorities.
  - (f) The existing needs of the water users within the area of the authority.
- (2) In addition to other powers and duties agreed upon, and notwithstanding the provisions of s. 163.01, such authority may:
  - (a) Upon approval of the electors residing in each county or municipality within the territory to be included in any authority, levy ad valorem taxes, not to exceed 0.5 mill, pursuant to s. 9(b), Art. VII of the State Constitution. No tax authorized by this paragraph shall be levied in any county or municipality without an affirmative vote of the electors residing in such county or municipality.
  - (b) Acquire water and water rights; develop, store, and transport water; provide, sell and deliver water for county or municipal uses and purposes; provide for the furnishing of such water and water service upon terms and conditions and at rates which will apportion to parties and nonparties an equitable share of the capital cost and operating expense of the authority's work to the purchaser.
  - (c) Collect, treat, and recover wastewater.
  - (d) Not engage in local distribution.
  - (e) Exercise the power of eminent domain in the manner provided by law for the condemnation of private property for public use to acquire title to such

interest in real property as is necessary to the exercise of the powers herein granted, except water and water rights already devoted to reasonable and beneficial use or any water production or transmission facilities owned by any county or municipality.

- (f) Issue revenue bonds in the manner prescribed by the Revenue Bond Act of 1953, as amended, part I, chapter 159, to be payable solely from funds derived from the sale of water by the authority to any county or municipality. Such bonds may be additionally secured by the full faith and credit of any county or municipality, as provided by s. 159.16 or by a pledge of excise taxes, as provided by s. 159.19. For the purpose of issuing revenue bonds, an authority shall be considered a "unit" as defined in s. 159.02(2) and as that term is used in the Revenue Bond Act of 1953, as amended. Such bonds may be issued to finance the cost of acquiring properties and facilities for the production and transmission of water by the authority to any county or municipality, which cost shall include the acquisition of real property and easements therein for such purposes. Such bonds may be in the form of refunding bonds to take up any outstanding bonds of the authority or of any county or municipality where such outstanding bonds are secured by properties and facilities for production and transmission of water, which properties and facilities are being acquired by the authority. Refunding bonds may be issued to take up and refund all outstanding bonds of said authority that are subject to call and termination, and all bonds of said authority that are not subject to call or redemption, when the surrender of said bonds can be procured from the holder thereof at prices satisfactory to the authority. Such refunding bonds may be issued at any time when, in the judgment of the authority, it will be to the best interest of the authority financially or economically by securing a lower rate of interest on said bonds or by extending the time of maturity of said bonds or, for any other reason, in the judgment of the authority, advantageous to said authority.
  - (g) Sue and be sued in its own name.
  - (h) Borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness.
  - (i) Join with one or more other public corporations for the purpose of carrying out any of its powers and for that purpose to contract with such other public corporation or corporations for the purpose of financing such acquisitions, construction, and operations. Such contracts may provide for contributions to be made by each party thereto, for the division and apportionment of the expenses of such acquisitions and operations, and for the division and apportionment of the benefits, services, and products therefrom. Such contract may contain such other and further covenants and agreements as may be necessary and convenient to accomplish the purposes hereof.
- (3) A regional water supply authority is authorized to develop, construct, operate, maintain, or contract for alternative sources of potable water, including desalinated water, and pipelines to interconnect authority sources and facilities, either by itself or jointly with a water management district; however, such

alternative potable water sources, facilities, and pipelines may also be privately developed, constructed, owned, operated, and maintained, in which event an authority and a water management district are authorized to pledge and contribute their funds to reduce the wholesale cost of water from such alternative sources of potable water supplied by an authority to its member governments.

- (4) When it is found to be in the public interest, for the public convenience and welfare, for a public benefit, and necessary for carrying out the purpose of any regional water supply authority, any state agency, county, water control district existing pursuant to chapter 298, water management district existing pursuant to this chapter, municipality, governmental agency, or public corporation in this state holding title to any interest in land is hereby authorized, in its discretion, to convey the title to or dedicate land, title to which is in such entity, including tax-reverted land, or to grant use-rights therein, to any regional water supply authority created pursuant to this section. Land granted or conveyed to such authority shall be for the public purposes of such authority and may be made subject to the condition that in the event said land is not so used, or if used and subsequently its use for said purpose is abandoned, the interest granted shall cease as to such authority and shall automatically revert to the granting entity.
- (5) Each county or municipality which is a party to an agreement pursuant to subsection (1) shall have a preferential right to purchase water from the regional water supply authority for use by such county or municipality.
- (6) In carrying out the provisions of this section, any county wherein water is withdrawn by the authority shall not be deprived, directly or indirectly, of the prior right to the reasonable and beneficial use of water which is required adequately to supply the reasonable and beneficial needs of the county or any of the inhabitants or property owners therein.
- (7) Upon a resolution adopted by the governing body of any county or municipality, the authority may, subject to a majority vote of its voting members, include such county or municipality in its regional water supply authority upon such terms and conditions as may be prescribed.
- (8) The authority shall design, construct, operate, and maintain facilities in the locations and at the times necessary to ensure that an adequate water supply will be available to all citizens within the authority.
- (9) Where a water supply authority exists pursuant to s. 373.1962 or s. 373.1963 under a voluntary interlocal agreement that is consistent with requirements in s. 373.1963(1)(b) and receives or maintains consumptive use permits under this voluntary agreement consistent with the water supply plan, if any, adopted by the governing board, such authority shall be exempt from consideration by the governing board or department of the factors specified in s. 373.223(3)(a)-(g) and the submissions required by s. 373.229(3). Such exemptions shall apply only

to water sources within the jurisdictional areas of such voluntary water supply interlocal agreements.

History.--s. 7, ch. 74-114; s. 1, ch. 77-174; s. 35, ch. 79-5; s. 1, ch. 86-22; s. 258, ch. 94-356; s. 29, ch. 97-160; s. 3, ch. 98-88.

## **Part II Permitting Consumptive Uses Water**

### **373.207 Abandoned Artesian Well--**

- (1) Each water management district shall develop a work plan which identifies the location of all known abandoned artesian wells within its jurisdictional boundaries and defines the actions which the district must take in order to ensure that each such well is plugged on or before January 1, 1992. The work plan shall include the following:
  - (a) An initial inventory which accounts for all known abandoned artesian wells in the district.
  - (b) The location and owner of each known abandoned well.
  - (c) The methodology proposed by the district to accomplish the plugging of all known abandoned wells within the district on or before January 1, 1992.
  - (d) Data relating to costs to be incurred for the plugging of all wells, including the per-well cost and personnel costs.
  - (e) A schedule of priority for the plugging of wells, which schedule is established to mitigate damage to the ground water resource due to water quality degradation.
- (2) Each water management district shall submit an annual update of its work plan to the Secretary of Environmental Protection by January 1 of each year, until all wells identified by the plan are plugged.

History.--s. 8, ch. 83-310; s. 263, ch. 94-356.

### **373.217 Superseded Laws and Regulations**

- (1) It is the intent of the Legislature to provide a means whereby reasonable programs for the issuance of permits authorizing the consumptive use of particular quantities of water may be authorized by the Department of Environmental Protection, subject to judicial review and also subject to review by the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission as provided in s. 373.114.
- (2) It is the further intent of the Legislature that Part II of the Florida Water Resources Act of 1972, as amended, as set forth in ss. 373.203-373.249, shall provide the exclusive authority for requiring permits for the consumptive use of water and for authorizing transportation thereof pursuant to s. 373.223(2).
- (3) If any provision of Part II of the Florida Water Resources Act of 1972, as amended, as set forth in ss. 373.203-373.249, is in conflict with any other



provision, limitation, or restriction which is now in effect under any law or ordinance of this state or any political subdivision or municipality, or any rule or regulation promulgated thereunder, Part II shall govern and control, and such other law or ordinance or rule or regulation promulgated thereunder shall be deemed superseded for the purpose of regulating the consumptive use of water. However, this section shall not be construed to supersede the provisions of the Florida Electrical Power Plant Siting Act.

- (4) Other than as provided in subsection (3) of this section, Part II of the Florida Water Resources Act of 1972, as amended, preempts the regulation of the consumptive use of water as defined in this act.

History.--s. 9, ch. 76-243; s. 1, ch. 77-174; s. 265, ch. 94-356.

### **373.219 Permits required.--**

- (1) The governing board or the department may require such permits for consumptive use of water and may impose such reasonable conditions as are necessary to assure that such use is consistent with the overall objectives of the district or department and is not harmful to the water resources of the area. However, no permit shall be required for domestic consumption of water by individual users.
- (2) In the event that any person shall file a complaint with the governing board or the department that any other person is making a diversion, withdrawal, impoundment, or consumptive use of water not expressly exempted under the provisions of this chapter and without a permit to do so, the governing board or the department shall cause an investigation to be made, and if the facts stated in the complaint are verified the governing board or the department shall order the discontinuance of the use.

History.--s. 2, part II, ch. 72-299; s. 9, ch. 73-190.

### **373.223 Conditions for a permit.--**

- (1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water:
  - (a) Is a reasonable-beneficial use as defined in s. 373.019<sup>1</sup>;
  - (b) Will not interfere with any presently existing legal use of water; and
  - (c) Is consistent with the public interest.
- (2) The governing board or the department may authorize the holder of a use permit to transport and use ground or surface water beyond overlying land, across county boundaries, or outside the watershed from which it is taken if the governing board or department determines that such transport and use is consistent with the public interest, and no local government shall adopt or enforce any law, ordinance, rule, regulation, or order to the contrary.

- (3) Except for the transport and use of water supplied by the Central and Southern Florida Flood Control Project, and anywhere in the state when the transport and use of water is supplied exclusively for bottled water as defined in s. 500.03(1)(d), any water use permit applications pending as of April 1, 1998, with the Northwest Florida Water Management District and self-suppliers of water for which the proposed water source and area of use or application are located on contiguous private properties, when evaluating whether a potential transport and use of ground or surface water across county boundaries is consistent with the public interest, pursuant to subsection (1)(c), the governing board or department shall consider:
- (a) The proximity of the proposed water source to the area of use or application.
  - (b) All impoundments, streams, groundwater sources, or watercourses that are geographically closer to the area of use or application than the proposed source, and that are technically and economically feasible for the proposed transport and use.
  - (c) All economically and technically feasible alternatives to the proposed source, including, but not limited to, desalination, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery.
  - (d) The potential environmental impacts that may result from the transport and use of water from the proposed source, and the potential environmental impacts that may result from the use of other water sources identified in paragraphs (b) and (c).
  - (e) Whether existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water for existing legal uses and reasonably anticipated future needs of the water supply planning region in which the proposed water source is located.
  - (f) Consultations with local governments affected by the proposed transport and use.
  - (g) The value of the existing capital investment in water-related infrastructure made by the applicant.

Where districtwide water supply assessments and regional water supply plans have been prepared pursuant to ss. 373.036 and 373.0361, the governing board or the department shall use the applicable plans and assessments as the basis for its consideration of the applicable factors in s. 373.223(3).

- (4) The governing board or the department, by regulation, may reserve from use by permit applicants, water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. Such reservations shall be subject to periodic review and revision in the light of changed conditions. However, all presently

existing legal uses of water shall be protected so long as such use is not contrary to the public interest.

History.--s. 3, part II, ch. 72-299; s. 10, ch. 73-190; s. 10, ch. 76-243; s. 35, ch. 85-81; s. 4, ch. 98-88.

### **373.224 Existing Permits**

Any permits or permit agreements for consumptive use of water executed or issued by an existing flood control, water management, or water regulatory district pursuant to this chapter or chapter 378 prior to December 31, 1976, shall remain in full force and effect in accordance with their terms until otherwise modified or revoked as authorized herein.

History.--s. 11, ch. 73-190; s. 3, ch. 75-125.

### **373.226 Existing uses.--**

- (1) All existing uses of water, unless otherwise exempted from regulation by the provisions of this chapter, may be continued after adoption of this permit system only with a permit issued as provided herein.
- (2) The governing board or the department shall issue an initial permit for the continuation of all uses in existence before the effective date of implementation of this part if the existing use is a reasonable-beneficial use as defined in s. 373.019 and is allowable under the common law of this state.
- (3) Application for permit under the provisions of subsection (2) must be made within a period of 2 years from the effective date of implementation of these regulations in an area. Failure to apply within this period shall create a conclusive presumption of abandonment of the use, and the user, if he or she desires to revive the use, must apply for a permit under the provisions of s. 373.229.

History.--s. 4, part II, ch. 72-299; s. 12, ch. 73-190; s. 598, ch. 95-148; s. 9, ch. 98-88.

<sup>1</sup>Note.--Substituted by the editors for a reference to s. 373.019(5) to conform to the redesignation of subunits by s. 37, ch. 79-65, and the further redesignation of subunits by s. 2, ch. 97-160.

### **373.2295 Interdistrict Transfers of Ground water**

- (1) As used in this section, “interdistrict transfer and use” means a consumptive water use which involves the withdrawal of ground water from a point within one water management district for use outside the boundaries of that district.
- (2) To obtain a permit for an interdistrict transfer and use of ground water, an applicant must file an application in accordance with s. 373.229 with the water management district having jurisdiction over the area from which the applicant proposes to withdraw ground water and submit a copy of the application to the

water management district having jurisdiction over the area where the water is to be used.

- (3) The governing board of the water management district where the ground water is proposed to be withdrawn shall review the application in accordance with this part, the rules of the district which relate to consumptive water use permitting, and other applicable provisions of this chapter.
- (4) In determining if an application is consistent with the public interest as required by s. 373.223, the projected populations, as contained in the future land use elements of the comprehensive plans adopted pursuant to chapter 163 by the local governments within which the withdrawal areas and the proposed use areas are located, will be considered together with other evidence presented on future needs of those areas. If the proposed interdistrict transfer of ground water meets the requirements of this chapter, and if the needs of the area where the use will occur and the specific area from which the ground water will be withdrawn can be satisfied, the permit for the interdistrict transfer and use shall be issued.
- (5) In addition to other requirements contained in this part, the water management district where the ground water is proposed to be withdrawn shall:
  - (a) Furnish copies of any application, information, correspondence, or other related material to the water management district having jurisdiction over the area where the water is to be used; and
  - (b) Request comments on the application and the future water needs of the proposed use area from the water management district having jurisdiction over the area where the water is to be used. If comments are received, they must be attached to the preliminary notice of intended agency action and may not create a point of entry for review whether issued by the governing board or district staff.
- (6) Upon completion of review of the application, the water management district where the ground water is proposed to be withdrawn shall prepare a notice of preliminary intended agency action which shall include an evaluation of the application and a recommendation of approval, denial, or approval with conditions. The notice shall be furnished to the district where the water is to be used, the applicant, the Department of Environmental Protection, the local governments having jurisdiction over the area from which the ground water is to be withdrawn and where the water is to be used, and any person requesting a copy of the notice.
  - (a) Any interested person may, within the time specified in the notice, notify in writing the district from where the ground water is to be withdrawn of such person's position and comments or objections, if any, to the preliminary intended action.
  - (b) The filing of the notice of intended agency action shall toll the time periods contained in s. 120.60 for the granting or denial of a permit for an interdistrict transfer and use of ground water.
  - (c) The preliminary intended agency action and any comments or objections of interested persons made pursuant to paragraph (a) shall be considered by the

governing board of the water management district where the ground water is proposed to be withdrawn. Following such consideration, the governing board shall issue a notice of intended agency action.

- (d) Any substantially affected person who submitted a notification pursuant to paragraph (a) may request review by the department within 14 days after the filing of the notice of intended agency action. If no request for review is filed, the notice of intended agency action shall become the final order of the governing board.
- (7) Notwithstanding the provisions of chapter 120, the department shall, within 30 days after its receipt of a request for review of the water management district's action, approve, deny, or modify the water management district's action on the proposed interdistrict transfer and use of ground water. The department shall issue a notice of its intended action. Any substantially affected person who requested review pursuant to paragraph (6)(a) may request an administrative hearing pursuant to chapter 120 within 14 days after notice of the department's intended action. The parties to such proceeding shall include, at a minimum, the affected water management districts and the applicant. The proceedings initiated by a petition under ss. 120.569 and 120.57, following the department's issuance of a notice of intended agency action, is the exclusive proceeding authorized for the review of agency action on the interdistrict transfer and use of ground water. This procedure is to give effect to the legislative intent that this section provide a single, efficient, simplified, coordinated permitting process for the interdistrict transfer and use of ground water.
- (8) The department shall issue a final order which is subject to review pursuant to s. 120.68 or s. 373.114.
- (9) In administering this part, the department or the water management districts may enter into interagency agreements. However, such agreements are not subject to the provisions of s. 373.046 and chapter 120.
- (10) The state hereby preempts any regulation of the interdistrict transfer and use of ground water. If any provision of this section is in conflict with any other provision or restriction under any law, administrative rule, or ordinance, this section shall govern and such law, rule, or ordinance shall be deemed superseded for the purposes of this section. A water management district or the department may not adopt special rules which prohibit or restrict interdistrict transfer and use of ground water in a manner inconsistent with this section.
- (11) Any applicant who has submitted an application for interdistrict transfer and use of ground water which is pending on July 11, 1987, may have the application considered pursuant to this section. New permits are not required for interdistrict transfers existing on July 11, 1987, for the duration of the permits issued for such uses.
- (12) If, after the final order of the department or final agency action under this section, the proposed use of the site designated in the application for ground water production, treatment, or transmission facilities does not conform with the existing zoning ordinances, a rezoning application may be submitted. If local

authorities deny the application for rezoning, the applicant may appeal this decision to the Land and Water Adjudicatory Commission, which shall authorize a variance or nonconforming use to the existing comprehensive plan and zoning ordinances, unless the commission determines after notice and hearing that such variance or nonconforming use is contrary to the public interest.

- (13) The permit required under this section and other sections of this chapter and chapter 403 are the sole permits required for interdistrict transfer and use of ground water, and such permits are in lieu of any license, permit, or similar document required by any state agency or political subdivision pursuant to chapter 163, chapter 380, or chapter 381, and the Florida Transportation Code.
- (14) When a consumptive use permit under this section is granted for water use beyond the boundaries of a local government from which or through which the ground water is withdrawn or transferred and a local government denies a permit required under chapter 125 or chapter 153 for a facility or any infrastructure which produces, treats, transmits, or distributes such ground water, the person or unit of government applying for the permit under chapter 125 or chapter 153 may appeal the denial to the Land and Water Adjudicatory Commission. The commission shall review the local government action for consistency with this chapter and the interdistrict ground water transfer permit and may reverse, modify, or approve the local government's action.

History.--s. 1, ch. 87-347; s. 266, ch. 94-356; s. 99, ch. 96-410.

### **373.233 Competing applications.--**

- (1) If two or more applications which otherwise comply with the provisions of this part are pending for a quantity of water that is inadequate for both or all, or which for any other reason are in conflict, the governing board or the department shall have the right to approve or modify the application which best serves the public interest.
- (2) In the event that two or more competing applications qualify equally under the provisions of subsection (1), the governing board or the department shall give preference to a renewal application over an initial application.

History.--s. 6, part II, ch. 72-299.

### **373.236 Duration of permits; compliance reports.--**

- (1) Permits shall be granted for a period of 20 years, if requested for that period of time, if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, permits may be issued for shorter durations which reflect the period for which such reasonable assurances can be provided. The governing board or the department may base the duration of permits on a reasonable system of classification according to source of supply or type of use, or both.

- (2) The governing board or the department may authorize a permit of duration of up to 50 years in the case of a municipality or other governmental body or of a public works or public service corporation where such a period is required to provide for the retirement of bonds for the construction of waterworks and waste disposal facilities.
- (3) Where necessary to maintain reasonable assurance that the conditions for issuance of a 20-year permit can continue to be met, the governing board or department, in addition to any conditions required pursuant to s. 373.219, may require a compliance report by the permittee every 5 years during the term of a permit. This report shall contain sufficient data to maintain reasonable assurance that the initial conditions for permit issuance are met. Following review of this report, the governing board or the department may modify the permit to ensure that the use meets the conditions for issuance. Permit modifications pursuant to this subsection shall not be subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the district. This subsection shall not be construed to limit the existing authority of the department or the governing board to modify or revoke a consumptive use permit.

History.--s. 7, part II, ch. 72-299; s. 13, ch. 97-160.

### **373.239 Modification and renewal of permit terms.--**

- (1) A permittee may seek modification of any terms of an unexpired permit.
- (2) If the proposed modification involves water use of 100,000 gallons or more per day, the application shall be treated under the provisions of s. 373.229 in the same manner as the initial permit application. Otherwise, the governing board or the department may at its discretion approve the proposed modification without a hearing, provided the permittee establishes that:
  - (a) A change in conditions has resulted in the water allowed under the permit becoming inadequate for the permittee's need, or
  - (b) The proposed modification would result in a more efficient utilization of water than is possible under the existing permit.
- (3) All permit renewal applications shall be treated under this part in the same manner as the initial permit application.

History.--s. 8, part II, ch. 72-299; s. 14, ch. 73-190.

### **373.243 Revocation of permits.—**

The governing board or the department may revoke a permit as follows:

- (1) For any material false statement in an application to continue, initiate, or modify a use, or for any material false statement in any report or statement of fact required of the user pursuant to the provisions of this chapter, the governing

board or the department may revoke the user's permit, in whole or in part, permanently.

- (2) For willful violation of the conditions of the permit, the governing board or the department may permanently or temporarily revoke the permit, in whole or in part.
- (3) For violation of any provision of this chapter, the governing board or the department may revoke the permit, in whole or in part, for a period not to exceed 1 year.
- (4) For nonuse of the water supply allowed by the permit for a period of 2 years or more, the governing board or the department may revoke the permit permanently and in whole unless the user can prove that his or her nonuse was due to extreme hardship caused by factors beyond the user's control.
- (5) The governing board or the department may revoke a permit, permanently and in whole, with the written consent of the permittee.

History.--s. 9, part II, ch. 72-299; s. 14, ch. 78-95; s. 600, ch. 95-148.

### **373.246 Declaration of Water Shortage or Emergency**

- (1) The governing board or the department by regulation shall formulate a plan for implementation during periods of water shortage. Copies of the water shortage plan shall be submitted to the Speaker of the House of Representatives and the President of the Senate no later than October 31, 1983. As a part of this plan the governing board or the department shall adopt a reasonable system of water-use classification according to source of water supply; method of extraction, withdrawal, or diversion; or use of water or a combination thereof. The plan may include provisions for variances and alternative measures to prevent undue hardship and ensure equitable distribution of water resources.
- (2) The governing board or the department by order may declare that a water shortage exists for a source or sources within all or part of the district when insufficient water is or will be available to meet the present and anticipated requirements of the users or when conditions are such as to require temporary reduction in total use within the area to protect water resources from serious harm. Such orders will be final agency action.
- (3) In accordance with the plan adopted under subsection (1), the governing board or the department may impose such restrictions on one or more classes of water uses as may be necessary to protect the water resources of the area from serious harm and to restore them to their previous condition.
- (4) A declaration of water shortage and any measures adopted pursuant thereto may be rescinded by the governing board or the department.
- (5) When a water shortage is declared, the governing board or the department shall cause notice thereof to be published in a prominent place within a newspaper of general circulation throughout the area. Publication of such notice will serve as notice to all users in the area of the condition of water shortage.



- (6) The governing board or the department shall notify each permittee in the district by regular mail of any change in the condition of his or her permit or any suspension of his or her permit or of any other restriction on the permittee's use of water for the duration of the water shortage.
- (7) If an emergency condition exists due to a water shortage within any area of the district, and if the department, or the executive director of the district with the concurrence of the governing board, finds that the exercise of powers under subsection (1) is not sufficient to protect the public health, safety, or welfare; the health of animals, fish, or aquatic life; a public water supply; or recreational, commercial, industrial, agricultural, or other reasonable uses, it or he or she may, pursuant to the provisions of s. 373.119, issue emergency orders reciting the existence of such an emergency and requiring that such action, including, but not limited to, apportioning, rotating, limiting, or prohibiting the use of the water resources of the district, be taken as the department or the executive director deems necessary to meet the emergency.
- (8) An affected party to whom an emergency order is directed under subsection (7) shall comply immediately, but may challenge such an order in the manner set forth in s. 373.119.

History.--s. 10, part II, ch. 72-299; s. 14, ch. 78-95; s. 11, ch. 82-101; s. 10, ch. 84-341; s. 601, ch. 95-148.

### **373.250 Reuse of reclaimed water.--**

- (1) The encouragement and promotion of water conservation and reuse of reclaimed water, as defined by the department, are state objectives and considered to be in the public interest. The Legislature finds that the use of reclaimed water provided by domestic wastewater treatment plants permitted and operated under a reuse program approved by the department is environmentally acceptable and not a threat to public health and safety.
- (2)
  - (a) For purposes of this section, "uncommitted" means the average amount of reclaimed water produced during the three lowest-flow months minus the amount of reclaimed water that a reclaimed water provider is contractually obligated to provide to a customer or user.
  - (b) Reclaimed water may be presumed available to a consumptive use permit applicant when a utility exists which provides reclaimed water, which has uncommitted reclaimed water capacity, and which has distribution facilities, which are initially provided by the utility at its cost, to the site of the affected applicant's proposed use.
- (3) The water management district shall, in consultation with the department, adopt rules to implement this section. Such rules shall include, but not be limited to:
  - (a) Provisions to permit use of water from other sources in emergency situations or if reclaimed water becomes unavailable, for the duration of the emergency or the unavailability of reclaimed water. These provisions shall also specify

the method for establishing the quantity of water to be set aside for use in emergencies or when reclaimed water becomes unavailable. The amount set aside is subject to periodic review and revision. The methodology shall take into account the risk that reclaimed water may not be available in the future, the risk that other sources may be fully allocated to other uses in the future, the nature of the uses served with reclaimed water, the extent to which the applicant intends to rely upon reclaimed water and the extent of economic harm which may result if other sources are not available to replace the reclaimed water. It is the intent of this paragraph to ensure that users of reclaimed water have the same access to ground or surface water and will otherwise be treated in the same manner as other users of the same class not relying on reclaimed water.

- (b) A water management district shall not adopt any rule which gives preference to users within any class of use established under s. 373.246 who do not use reclaimed water over users within the same class who use reclaimed water.
- (4) Nothing in this section shall impair a water management district's authority to plan for and regulate consumptive uses of water under this chapter.
- (5) This section applies to new consumptive use permits and renewals of existing consumptive use permits.
- (6) Each water management district shall submit to the Legislature, by June 1 of each year, an annual report which describes the district's progress in promoting the reuse of reclaimed water. The report shall include, but not be limited to:
  - (a) The number of permits issued during the year which required reuse of reclaimed water and, by categories, the percentages of reuse required.
  - (b) The number of permits issued during the year which did not require the reuse of reclaimed water and, of those permits, the number which reasonably could have required reuse.
  - (c) In the second and subsequent annual reports, a statistical comparison of reuse required through consumptive use permitting between the current and preceding years.
  - (d) A comparison of the volume of reclaimed water available in the district to the volume of reclaimed water required to be reused through consumptive use permits.
  - (e) A comparison of the volume of reuse of reclaimed water required in water resource caution areas through consumptive use permitting to the volume required in other areas in the district through consumptive use permitting.
  - (f) An explanation of the factors the district considered when determining how much, if any, reuse of reclaimed water to require through consumptive use permitting.
  - (g) A description of the district's efforts to work in cooperation with local government and private domestic wastewater treatment facilities to increase the reuse of reclaimed water. The districts, in consultation with the

department, shall devise a uniform format for the report required by this subsection and for presenting the information provided in the report.

History.--s. 2, ch. 94-243; s. 35, ch. 97-160; s. 18, ch. 97-164.

## **Part V Finance and Taxation**

### **373.536 District budget and hearing thereon.--**

- (1) The fiscal year of districts created under the provisions of this chapter shall extend from October 1 of one year through September 30 of the following year. The budget officer of the district shall, on or before July 15 of each year, submit for consideration by the governing board of the district a tentative budget for the district covering its proposed operation and requirements for the ensuing fiscal year. Unless alternative notice requirements are otherwise provided by law, notice of all budget hearings conducted by the governing board or district staff must be published in a newspaper of general circulation in each county in which the district lies not less than 5 days nor more than 15 days before the hearing. Budget workshops conducted for the public and not governed by s. 200.065 must be advertised in a newspaper of general circulation in the community or area in which the workshop will occur not less than 5 days nor more than 15 days before the workshop. The tentative budget shall be adopted in accordance with the provisions of s. 200.065; however, if the mailing of the notice of proposed property taxes is delayed beyond September 3 in any county in which the district lies, the district shall advertise its intention to adopt a tentative budget and millage rate, pursuant to s. 200.065(3)(g), in a newspaper of general paid circulation in that county. The budget shall set forth, classified by object and purpose, and by fund if so designated, the proposed expenditures of the district for bonds or other debt, for construction, for acquisition of land, for operation and maintenance of the district works, for the conduct of the affairs of the district generally, and for other purposes, to which may be added an amount to be held as a reserve. District administrative and operating expenses must be identified in the budget and allocated among district programs.
- (2) The budget shall also show the estimated amount which will appear at the beginning of the fiscal year as obligated upon commitments made but uncompleted. There shall be shown the estimated unobligated or net balance which will be on hand at the beginning of the fiscal year, and the estimated amount to be raised by district taxes and from other sources for meeting the requirements of the district.
- (3) As provided in s. 200.065(2)(d), the board shall publish one or more notices of its intention to finally adopt a budget for the district for the ensuing fiscal year. The notice shall appear adjacent to an advertisement which shall set forth the tentative budget in full. The notice and advertisement shall be published in one or more newspapers having a combined general circulation in the counties having land in the district. Districts may include explanatory phrases and

examples in budget advertisements published under s. 200.065 to clarify or illustrate the effect that the district budget may have on ad valorem taxes.

- (4) The hearing to finally adopt a budget and millage rate shall be by and before the governing board of the district as provided in s. 200.065 and may be continued from day to day until terminated by the board. The final budget for the district will thereupon be the operating and fiscal guide for the district for the ensuing year; however, transfers of funds may be made within the budget by action of the governing board at a public meeting of the governing board. Should the district receive unanticipated funds after the adoption of the final budget, the final budget may be amended by including such funds, so long as notice of intention to amend is published one time in one or more newspapers qualified to accept legal advertisements having a combined general circulation in the counties in the district. The notice shall set forth the proposed amendment and shall be published at least 10 days prior to the public meeting of the board at which the proposed amendment is to be considered. However, in the event of a disaster or of an emergency arising to prevent or avert the same, the governing board shall not be limited by the budget but shall have authority to apply such funds as may be available therefor or as may be procured for such purpose.
- (5)
  - (a) The Executive Office of the Governor is authorized to approve or disapprove, in whole or in part, the budget of each water management district and shall analyze each budget as to the adequacy of fiscal resources available to the district and the adequacy of district expenditures related to water supply, including water resource development projects identified in the district's regional water supply plans; water quality; flood protection and floodplain management; and natural systems. This analysis shall be based on the particular needs within each water management district in those four areas of responsibility.
  - (b) The Executive Office of the Governor and the water management districts shall develop a process to facilitate review and communication regarding water management district budgets, as necessary. Written disapproval of any provision in the tentative budget must be received by the district at least 5 business days prior to the final district budget adoption hearing conducted under s. 200.065(2)(d). If written disapproval of any portion of the budget is not received at least 5 business days prior to the final budget adoption hearing, the governing board may proceed with final adoption. Any provision rejected by the Governor shall not be included in a district's final budget.
  - (c)<sup>1</sup>Each water management district shall, by August 1 of each year, submit for review a tentative budget to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of all legislative committees and subcommittees with substantive or fiscal jurisdiction over water management districts, the secretary of the department, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district. The tentative budget

must<sup>2</sup> include, but is not limited to, the following information for the preceding fiscal year and the current fiscal year, and the proposed amounts for the upcoming fiscal year, in a standard format prescribed by the Executive Office of the Governor which is generally consistent with the format prescribed by legislative budget instructions for state agencies and the format requirements of s. 216.031:

1. The millage rates and the percentage increase above the rolled-back rate, together with a summary of the reasons the increase is required, and the percentage increase in taxable value resulting from new construction;
2. The salary and benefits, expenses, operating capital outlay, number of authorized positions, and other personal services for the following program areas, including a separate section for lobbying, intergovernmental relations, and advertising:
  - a. District management and administration;
  - b. Implementation through outreach activities;
  - c. Implementation through regulation;
  - d. Implementation through acquisition, restoration, and public works;
  - e. Implementation through operations and maintenance of lands and works;
  - f. Water resources planning and monitoring; and
  - g. A full description and accounting of expenditures for lobbying activities relating to local, regional, state, and federal governmental affairs, whether incurred by district staff or through contractual services and all expenditures for public relations, including all expenditures for public service announcements and advertising in any media.

In addition to the program areas reported by all water management districts, the South Florida Water Management District shall include in its budget document a separate section on all costs associated with the Everglades Construction Project.

3. The total amount in the district budget for each area of responsibility listed in paragraph (a) and for water resource development projects identified in the district's regional water supply plans.
4. A 5-year capital improvements plan.
5. A description of each new, expanded, reduced, or eliminated program.
6. A proposed 5-year water resource development work program, that describes the district's implementation strategy for the water resource development component of each approved regional water supply plan developed or revised pursuant to s. 373.0361. The work program shall address all the elements of the water resource development component in the district's approved regional water supply plans. The office of the Governor, with the assistance of the department, shall review the proposed work program. The review shall include a written evaluation of its consistency with and furtherance of the district's approved regional water supply plans, and adequacy of proposed expenditures. As part of

the review, the Executive Office of the Governor and the department shall afford to all interested parties the opportunity to provide written comments on each district's proposed work program. At least 7 days prior to the adoption of its final budget, the governing board shall state in writing to the Executive Office of the Governor which changes recommended in the evaluation it will incorporate into its work program, or specify the reasons for not incorporating the changes. The office of the Governor shall include the district's responses in the written evaluation and shall submit a copy of the evaluation to the Legislature; and

7. The funding sources, including, but not limited to, ad valorem taxes, Surface Water Improvement and Management Program funds, other state funds, federal funds, and user fees and permit fees for each program area.
- (d) By September 5 of the year in which the budget is submitted, the House and Senate appropriations chairs may transmit to each district comments and objections to the proposed budgets. Each district governing board shall include a response to such comments and objections in the record of the governing board meeting where final adoption of the budget takes place, and the record of this meeting shall be transmitted to the Executive Office of the Governor, the department, and the chairs of the House and Senate appropriations committees.
- (e) The Executive Office of the Governor shall annually, on or before December 15, file with the Legislature a report that summarizes the expenditures of the water management districts by program area and identifies the districts that are not in compliance with the reporting requirements of this section. State funds shall be withheld from a water management district that fails to comply with these reporting requirements.

History.--s. 28, ch. 25209, 1949; s. 3, ch. 29790, 1955; s. 4, ch. 61-497; s. 1, ch. 65-432; s. 1, ch. 67-74; s. 25, ch. 73-190; s. 18, ch. 74-234; s. 46, ch. 80-274; s. 230, ch. 81-259; s. 3, ch. 84-164; s. 2, ch. 86-190; s. 9, ch. 91-288; s. 24, ch. 93-213; s. 276, ch. 94-356; s. 1012, ch. 95-148; s. 5, ch. 96-339; s. 16, ch. 97-160.

<sup>1</sup>Note.--Section 16, ch. 97-160, purported to amend paragraph (c) of subsection (5), but did not set out in full the amended paragraph to include subparagraph 4. Absent affirmative evidence that the Legislature intended to repeal the omitted material, it is set out here pending clarification by the Legislature.

<sup>2</sup>Note.--The word "which" preceding the word "must" was deleted by the editors to improve clarity.

Note.--Former s. 378.28.

### **373.59 Water Management Lands Trust Fund.--**

- (1) There is established within the Department of Environmental Protection the Water Management Lands Trust Fund to be used as a nonlapsing fund for the

purposes of this section. The moneys in this fund are hereby continually appropriated for the purposes of land acquisition, management, maintenance, capital improvements, payments in lieu of taxes, and administration of the fund in accordance with the provisions of this section.

(2)

(a) By January 15 of each year, each district shall file with the Legislature and the Secretary of Environmental Protection a report of acquisition activity together with modifications or additions to its 5-year plan of acquisition. Included in the report shall be an identification of those lands which require a full fee simple interest to achieve water management goals and those lands which can be acquired using alternatives to fee simple acquisition techniques and still achieve such goals. In their evaluation of which lands would be appropriate for acquisition through alternatives to fee simple, district staff shall consider criteria including, but not limited to, acquisition costs, the net present value of future land management costs, the net present value of ad valorem revenue loss to the local government, and the potential for revenue generated from activities compatible with acquisition objectives. The report shall also include a description of land management activity. Expenditure of moneys from the Water Management Lands Trust Fund shall be limited to the costs for acquisition, management, maintenance, and capital improvements of lands included within the 5-year plan as filed by each district and to the department's costs of administration of the fund. The department's costs of administration shall be charged proportionally against each district's allocation using the formula provided in subsection (7)<sup>1</sup>. However, no acquisition of lands shall occur without a public hearing similar to those held pursuant to the provisions set forth in s. 120.54. In the annual update of its 5-year plan for acquisition, each district shall identify lands needed to protect or recharge ground water and shall establish a plan for their acquisition as necessary to protect potable water supplies. Lands which serve to protect or recharge ground water identified pursuant to this paragraph shall also serve to protect other valuable natural resources or provide space for natural resource based recreation.

(b) Moneys from the fund shall be used for continued acquisition, management, maintenance, and capital improvements of the following lands and lands set forth in the 5-year land acquisition plan of the district:

1. By South Florida Water Management District--lands in the water conservation areas and areas adversely affected by raising water levels of Lake Okeechobee in accordance with present regulation schedules, and the Savannahs Wetland area in Martin County and St. Lucie County.
2. Each district shall remove the property of an unwilling seller from its plan of acquisition at the next scheduled update of the plan, if in receipt of a request to do so by the property owner.

(4)

(a). Moneys from the Water Management Lands Trust Fund shall be used for acquiring the fee or other interest in lands necessary for water management,

water supply, and the conservation and protection of water resources, except that such moneys shall not be used for the acquisition of rights-of-way for canals or pipelines. Such moneys shall also be used for management, maintenance, and capital improvements. Interests in real property acquired by the districts under this section may be used for permissible water resource development and water supply development purposes under the following conditions: the minimum flows and levels of priority water bodies on such lands have been established; the project complies with all conditions for issuance of a permit under part II of this chapter; and the project is compatible with the purposes for which the land was acquired. Lands acquired with moneys from the fund shall be managed and maintained in an environmentally acceptable manner and, to the extent practicable, in such a way as to restore and protect their natural state and condition.

- (b). The Secretary of Environmental Protection shall release moneys from the Water Management Lands Trust Fund to a district for preacquisition costs within 30 days after receipt of a resolution adopted by the district's governing board which identifies and justifies any such preacquisition costs necessary for the purchase of any lands listed in the district's 5-year plan. The district shall return to the department any funds not used for the purposes stated in the resolution, and the department shall deposit the unused funds into the Water Management Lands Trust Fund.
  - (c). The Secretary of Environmental Protection shall release acquisition moneys from the Water Management Lands Trust Fund to a district following receipt of a resolution adopted by the governing board identifying the lands being acquired and certifying that such acquisition is consistent with the plan of acquisition and other provisions of this act. The governing board shall also provide to the Secretary of Environmental Protection a copy of all certified appraisals used to determine the value of the land to be purchased. Each parcel to be acquired must have at least one appraisal. Two appraisals are required when the estimated value of the parcel exceeds \$500,000. However, when both appraisals exceed \$500,000 and differ significantly, a third appraisal may be obtained. If the purchase price is greater than the appraisal price, the governing board shall submit written justification for the increased price. The Secretary of Environmental Protection may withhold moneys for any purchase that is not consistent with the 5-year plan or the intent of this act or that is in excess of appraised value. The governing board may appeal any denial to the Land and Water Adjudicatory Commission pursuant to s. 373.114.
  - (d). The Secretary of Environmental Protection shall release to the districts moneys for management, maintenance, and capital improvements following receipt of a resolution and request adopted by the governing board which specifies the designated managing agency, specific management activities, public use, estimated annual operating costs, and other acceptable documentation to justify release of moneys.
- (5) Water management land acquisition costs shall include payments to owners and costs and fees associated with such acquisition.



- (6) If a district issues revenue bonds or notes under s. 373.584, the district may pledge its share of the moneys in the Water Management Lands Trust Fund as security for such bonds or notes. The Department of Environmental Protection shall pay moneys from the trust fund to a district or its designee sufficient to pay the debt service, as it becomes due, on the outstanding bonds and notes of the district; however, such payments shall not exceed the district's cumulative portion of the trust fund. However, any moneys remaining after payment of the amount due on the debt service shall be released to the district pursuant to subsection (3)<sup>2</sup>.
- (7) Any unused portion of a district's share of the fund shall accumulate in the trust fund to the credit of that district. Interest earned on such portion shall also accumulate to the credit of that district to be used for land acquisition, management, maintenance, and capital improvements as provided in this section. The total moneys over the life of the fund available to any district under this section shall not be reduced except by resolution of the district governing board stating that the need for the moneys no longer exists.
- (8) Moneys from the Water Management Lands Trust Fund shall be allocated to the five water management districts in the following percentages:
  - (a) Thirty percent to the South Florida Water Management District.
  - (b) Twenty-five percent to the Southwest Florida Water Management District.
  - (c) Twenty-five percent to the St. Johns River Water Management District.
  - (d) Ten percent to the Suwannee River Water Management District.
  - (e) Ten percent to the Northwest Florida Water Management District.
- (9) Each district may use its allocation under subsection (8) for management, maintenance, and capital improvements. Capital improvements shall include, but need not be limited to, perimeter fencing, signs, firelanes, control of invasive exotic species, controlled burning, habitat inventory and restoration, law enforcement, access roads and trails, and minimal public accommodations, such as primitive campsites, garbage receptacles, and toilets.
- (10) Moneys in the fund not needed to meet current obligations incurred under this section shall be transferred to the State Board of Administration, to the credit of the fund, to be invested in the manner provided by law. Interest received on such investments shall be credited to the fund.
- (11) Lands acquired for the purposes enumerated in this section shall also be used for general public recreational purposes. General public recreational purposes shall include, but not be limited to, fishing, hunting, horseback riding, swimming, camping, hiking, canoeing, boating, diving, birding, sailing, jogging, and other related outdoor activities to the maximum extent possible considering the environmental sensitivity and suitability of those lands. These public lands shall be evaluated for their resource value for the purpose of establishing which parcels, in whole or in part, annually or seasonally, would be conducive to general public recreational purposes. Such findings shall be included in management plans which are developed for such public lands. These lands shall

be made available to the public for these purposes, unless the district governing board can demonstrate that such activities would be incompatible with the purposes for which these lands were acquired. For any fee simple acquisition of a parcel which is or will be leased back for agricultural purposes, or for any acquisition of a less-than-fee interest in land that is or will be used for agricultural purposes, the district governing board shall first consider having a soil and water conservation district created pursuant to chapter 582 manage and monitor such interest.

- (12) A district may dispose of land acquired under this section, pursuant to s. 373.056 or s. 373.089. However, revenue derived from such disposal may not be used for any purpose except the purchase of other lands meeting the criteria specified in this section or payment of debt service on revenue bonds or notes issued under s. 373.584, as provided in this section.
- (13) No moneys generated pursuant to this act may be applied or expended subsequent to July 1, 1985, to reimburse any district for prior expenditures for land acquisition from ad valorem taxes or other funds other than its share of the funds provided herein or to refund or refinance outstanding debt payable solely from ad valorem taxes or other funds other than its share of the funds provided herein.
- (14)
  - (a) Beginning in fiscal year 1992-1993, not more than one-fourth of the land management funds provided for in subsections (1) and (9) in any year shall be reserved annually by a governing board, during the development of its annual operating budget, for payment in lieu of taxes to qualifying counties for actual ad valorem tax losses incurred as a result of lands purchased with funds allocated pursuant to s. 259.101(3)(b). In addition, the Northwest Florida Water Management District, the South Florida Water Management District, the Southwest Florida Water Management District, the St. Johns River Water Management District, and the Suwannee River Water Management District shall pay to qualifying counties payments in lieu of taxes for district lands acquired with funds allocated pursuant to subsection (8). Reserved funds that are not used for payment in lieu of taxes in any year shall revert to the fund to be used for management purposes or land acquisition in accordance with this section.
  - (b) Payment in lieu of taxes shall be available to counties for each year in which the levy of ad valorem tax is at least 8.25 mills or the amount of the tax loss from all completed Preservation 2000 acquisitions in the county exceeds 0.01 percent of the county's total taxable value, and the population is 75,000 or less and to counties with a population of less than 100,000 which contain all or a portion of an area of critical state concern designated pursuant to chapter 380.
  - (c) If insufficient funds are available in any year to make full payments to all qualifying counties, such counties shall receive a pro rata share of the moneys available.

- (d) The payment amount shall be based on the average amount of actual taxes paid on the property for the 3 years immediately preceding acquisition. For lands purchased prior to July 1, 1992, applications for payment in lieu of taxes shall be made to the districts by January 1, 1993. For lands purchased after July 1, 1992, applications for payment in lieu of taxes shall be made no later than January 31 of the year following acquisition. No payment in lieu of taxes shall be made for properties which were exempt from ad valorem taxation for the year immediately preceding acquisition. Payment in lieu of taxes shall be limited to a period of 10 consecutive years of annual payments.
- (e) Payment in lieu of taxes shall be made within 30 days after: certification by the Department of Revenue that the amounts applied for are appropriate, certification by the Department of Environmental Protection that funds are available, and completion of any fund transfers to the district. The governing board may reduce the amount of a payment in lieu of taxes to any county by the amount of other payments, grants, or in-kind services provided to that county by the district during the year. The amount of any reduction in payments shall remain in the Water Management Lands Trust Fund for purposes provided by law.
- (f) If a district governing board conveys to a local government title to any land owned by the board, any payments in lieu of taxes on the land made to the local government shall be discontinued as of the date of the conveyance.
- (15) Each district is encouraged to use volunteers to provide land management and other services. Volunteers shall be covered by liability protection and workers' compensation in the same manner as district employees, unless waived in writing by such volunteers or unless such volunteers otherwise provide equivalent insurance.
- (16) Each water management district is authorized and encouraged to enter into cooperative land management agreements with state agencies or local governments to provide for the coordinated and cost-effective management of lands to which the water management districts, the Board of Trustees of the Internal Improvement Trust Fund, or local governments hold title. Any such cooperative land management agreement must be consistent with any applicable laws governing land use, management duties, and responsibilities and procedures of each cooperating entity. Each cooperating entity is authorized to expend such funds as are made available to it for land management on any such lands included in a cooperative land management agreement.

History.—ss. 3, 5, ch. 81-33; s. 36, ch. 83-218; s. 5, ch. 85-347; s. 4, ch. 86-22; s. 8, ch. 86-294; s. 13, ch. 90-217; s. 11, ch. 91-288; s. 13, ch. 92-288; s. 277, ch. 94-356; s. 1, ch. 95-311; s. 6, ch. 95-349; s. 21, ch. 95-430; s. 17, ch. 96-389; s. 25, ch. 97-94; s. 17, ch. 97-160; s. 14, ch. 97-164.

<sup>1</sup>Note.—Redesignated as subsection (8) by s. 17, ch. 96-389.

<sup>2</sup>Note.—Redesignated as subsection (4) by s. 17, ch. 96-389.

## **Part VI Miscellaneous Provisions**

### **373.619 Recognition of Water and Sewer-Saving Devices**

The Legislature urges all public-owned or investor-owned water and sewerage systems to reduce connection fees and regular service charges for customers who utilize water or sewer-saving devices, including, but not limited to, individual graywater disposal systems.

History.--s. 2, ch. 82-10.--

### **373.62 Water conservation; automatic sprinkler systems.--**

Any person who purchases and installs an automatic lawn sprinkler system after May 1, 1991, shall install a rain sensor device or switch which will override the irrigation cycle of the sprinkler system when adequate rainfall has occurred.

History.--s. 7, ch. 91-41; s. 7, ch. 91-68.

## **SELECTED PASSAGES FROM CHAPTER 62-40, F.A.C.**

### **Part I General Water Policy Part I General Water**

#### **62-40.110 Declaration and Intent**

- (1) The waters of the state are among its basic resources. Such waters should be managed to conserve and protect natural resources and scenic beauty and to realize the full beneficial use of the resource. Recognizing the importance of water to the state, the Legislature passed the Water Resources Act, Chapter 373, Florida Statutes, and the Air and Water Pollution Control Act, Chapter 403, Florida Statutes. Additionally, numerous goals and policies within the State Comprehensive Plan, Chapter 187, Florida Statutes, address water resources and natural systems protection.
- (2) This Chapter is intended to provide water policy goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, as expressed in Chapters 187, 373, and 403, Florida Statutes.
- (3) These policies shall be construed as a whole and no individual policy shall be construed or applied in isolation from other policies. All constructions of this Chapter shall give meaning to all parts of the rule when possible.
- (4) Notwithstanding the incorporation of other Department rules in Rule 62-40.120, F.A.C., this Chapter shall not constitute standards or criteria for decisions on individual permits.
- (5) A goal of this Chapter is to coordinate the management of water and related land resources. Local governments shall consider state water policy in the development of their comprehensive plans as required by Chapter 163, Florida Statutes, and as required by Section 403.0891(3)(a), F.S. Special districts which manage water shall consider state water policy in the development of their plans and programs. The Legislature has also expressed its intent, in Section 373.0395, F.S., that future growth and development planning reflect the limitations of available ground water and other water supplies.
- (6) It is an objective of the State to protect the functions of entire ecological systems, as developed and defined in the programs, rules, and plans of the Department and water management districts.
- (7) Government services should be provided efficiently. Inefficiency resulting from duplication of permitting shall be eliminated where appropriate, including water quality and water quantity permitting functions.
- (8) Public education, awareness, and participation shall be encouraged. The Department and Districts should assist educational institutions in the development of educational curricula and research programs which meet Florida's present and future water management needs.
- (9) This Chapter does not repeal, amend or otherwise alter any rule now existing or later adopted by the Department or Districts. However, procedures are included

in this Chapter which provide for the review of Department and District plans, programs, and rules to assure consistency with the provisions of this Chapter. The procedure for modification of District rules as requested by the Department shall be as prescribed in Section 373.114, F.S. and applicable provisions of this Chapter.

- (10) It is the intent of the Department, in cooperation with the Water Management Districts, to seek adequate sources of funding to supplement District ad valorem taxes to implement the provisions of this Chapter.

### **62-40.120 Department Rules**

State water policy shall also include the following Department rules:

- (1) Water Quality Standards, Chapter 62-3, F.A.C.
- (2) Surface Water Quality Standards, Chapter 62-302, F.A.C.
- (3) Surface Water Improvement and Management, Chapter 62-43, F.A.C.
- (4) Ground Water Classes, Standards, and Exemptions, Chapter 62-520, F.A.C.
- (5) Drinking Water Standards, Monitoring, and Reporting, Chapter 62-550, F.A.C.

## **Part II Definitions**

### **62-40.210 Definitions**

When used in this Chapter and in the review of rules of the Districts pursuant to Section 373.114(2), F.S., unless the context or content of such District rule requires a narrower, more specific meaning, the following words shall mean:

- (1) “Aquifer” shall mean a geologic formation, group of formations, or part of a formation that contains sufficient saturated permeable material to yield useful quantities of ground water to wells, springs or surface water.
- (2) “Consumptive use” means any use of water which reduces the supply from which it is withdrawn or diverted.
- (3) “Department” means the Department of Environmental Protection.
- (4) “Detention” means the delay of stormwater runoff prior to its discharge.
- (5) “District” means a Water Management District created pursuant to Chapter 373, Florida Statutes.
- (6) “District Water Management Plan” means the long-range comprehensive water resource management plan prepared by a District.
- (7) “Drainage basin” means a subdivision of a watershed.

- (8) “Effluent”, unless specifically stated otherwise, means water that is not reused after flowing out of any wastewater treatment facility or other works used for the purpose of treating, stabilizing, or holding wastes.
- (9) “Floodplain” means land area subject to inundation by flood waters from a river, watercourse, lake, or coastal waters. Floodplains are delineated according to their estimated frequency of flooding.
- (10) “Florida Water Plan” means the State Water Use Plan, together with the water quality standards and water classifications adopted by the Department.
- (11) “Governing Board” means the governing board of a water management district.
- (12) “Ground water” means water beneath the surface of the ground, whether or not flowing through known and definite channels.
- (13) “Ground water availability” means the potential quantity of ground water which can be withdrawn without resulting in significant harm to the water resources or associated natural systems.
- (14) “Ground water basin” means a ground water flow system that has defined boundaries and may include permeable materials that are capable of storing or furnishing a significant water supply. The basin includes both the surface area and the permeable materials beneath it.
- (15) “High recharge areas” means areas contributing significant volumes of water which add to the storage and flow of an aquifer through vertical movement from the land surface. The term significant will vary geographically depending on the hydrologic characteristics of that aquifer.
- (16) “Natural systems” for the purpose of this rule means an ecological system supporting aquatic and wetland-dependent natural resources, including fish and aquatic and wetland-dependent wildlife habitat.
- (17) “Nutrient limitations” means those numeric values which establish a maximum or minimum allowable nutrient loading or concentration, as appropriate, for a specific nutrient. Nutrient limitations are established through an individual permit or other action within the regulatory authority of the Department or a District. These limitations serve to implement state water quality standards.
- (18) “Pollutant load reduction goal” means estimated numeric reductions in pollutant loadings needed to preserve or restore designated uses of receiving bodies of water and maintain water quality consistent with applicable state water quality standards.
- (19) “Prime recharge areas” means areas that are generally within high recharge areas and are significant to present and future ground water uses including protection and maintenance of natural systems and water supply.
- (20) “Reasonable-beneficial use” means the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.

- (21) “Reclaimed water” means water that has received at least secondary treatment and is reused after flowing out of a domestic wastewater treatment facility.
- (22) “Retention” means the prevention of stormwater runoff from direct discharge.
- (23) “Reuse” means the deliberate application of reclaimed water, in compliance with Department and District rules, for a beneficial purpose.
  - (a) For example, said uses may encompass:
    - 1. Landscape irrigation (such as irrigation of golf courses, cemeteries, highway medians, parks, playgrounds, school yards, retail nurseries, and residential properties);
    - 2. Agricultural irrigation (such as irrigation of food, fiber, fodder and seed crops, wholesale nurseries, sod farms, and pastures);
    - 3. Aesthetic uses (such as decorative ponds and fountains);
    - 4. Ground water recharge (such as slow rate, rapid-rate, and absorption field land application systems) but not including disposal methods described in Rule 62-40.210(23)(b), F.A.C.;
    - 5. Industrial uses (such as cooling water, process water, and wash waters);
    - 6. Environmental enhancement of surface waters resulting from discharge of reclaimed water having received at least advanced wastewater treatment or from discharge of reclaimed water for wetlands restoration;
    - 7. Fire protection; or
    - 8. Other useful purpose.
  - (b) Overland flow land application systems, rapid-rate land application systems providing continuous loading to a single percolation cell, other land application systems involving less than secondary treatment prior to application, septic tanks, and ground water disposal systems using Class I wells injecting effluent or wastes into Class G-IV waters shall be excluded from the definition of reuse.
- (24) “Secretary” means the Secretary of the Department of Environmental Protection.
- (25) “State water quality standards” means water quality standards adopted by the Environmental Regulations Commission pursuant to Chapter 403, Florida Statutes, including standards composed of designated most beneficial uses (classification of waters), the numerical and narrative criteria applied to the specific water use or classification, the Florida anti-degradation policy, and the moderating provisions contained in Rules 62-3, 62-4, 62-302, 62-520, and 62-550, F.A.C.
- (26) “State Water Use Plan” means the plan formulated pursuant to Section 373.036, Florida Statutes, for the use and development of waters of the State.
- (27) “Stormwater” means the water which results from a rainfall event.
- (28) “Stormwater management program” means the institutional strategy for stormwater management, including urban, agricultural, and other stormwater.
- (29) “Stormwater management system” means a system which is designed and constructed or implemented to control stormwater, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse stormwater to prevent



or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system.

- (30) “Stormwater utility” means the entity through which funding for a stormwater management program is obtained by assessing the cost of the program to the beneficiaries based on their relative contribution to its need. It is operated as a typical utility which bills services regularly, similar to water and wastewater services.
- (31) “Surface water” means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth’s surface.
- (32) “Surface water availability” means the potential quantity of surface water that can be removed or retained without significant harm to the water resources or associated natural systems.
- (33) “Water resource caution area” means a geographic area identified by a water management district as having existing water resource problems or an area in which water resource problems are projected to develop during the next twenty years. A critical water supply problem area, as described in Section 403.064, F.S., is an example of a water resource caution area.
- (34) “Water” or “waters in the state” means any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.
- (35) “Watershed” means the land area which contributes to the flow of water into a receiving body of water.
- (36) “Watershed management goal” means an overall goal for the management of water resources within a watershed.
- (37) “Wetlands” means those areas that are inundated or saturated by surface or ground water with a frequency sufficient to support, and under normal circumstances do or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonably saturated soil conditions for growth and reproduction, such as swamps, marshes, bayheads, cypress ponds, sloughs, wet prairies, wet meadows, river overflows, mud flats and natural ponds. This definition does not alter the Department’s jurisdiction over dredging and filling activities in wetlands as defined in Section 403.911(7), F.S.

## **Part III General Provisions**

### **62-40.310 General Policies**

The following statement of general water policy shall guide Department review of water management programs, rules, and plans. Water management programs, rules and plans, where economically and environmentally feasible, not contrary to the public interest, and consistent with Florida law, shall seek to:

- (1) Water Supply
  - (a) Assure availability of an adequate and affordable supply of water for all reasonable-beneficial uses. Uses of water authorized by a permit shall be limited to reasonable-beneficial uses.
  - (b) Reserve from use that water necessary to support essential non-withdrawal demands, including navigation, recreation, and the protection of fish and wildlife.
  - (c) Champion and develop sound water conservation practices and public information programs.
  - (d) Advocate and direct the reuse of reclaimed water as an integral part of water and wastewater management programs, rules, and plans consistent with protection of the public health and surface and ground water quality.
  - (e) Encourage the use of water of the lowest acceptable quality for the purpose intended.
  - (f) Encourage the development of local and regional surface and ground water supplies within districts rather than transfer water across District boundaries.
  - (g) Encourage demand management and the development of alternative water supplies, including water conservation, reuse of reclaimed water, desalination, stormwater and industrial wastewater reuse, recharge, and aquifer storage and recovery.
  - (h) Protect aquifers from depletion through water conservation and preservation of the functions of high recharge areas.
- (2) Water Quality Protection and Management
  - (a) Restore and protect the quality of ground and surface water by solving current problems and ensuring high quality treatment for stormwater and wastewater.
  - (b) Identify existing and future public water supply areas and protect them from contamination.
- (3) Flood Protection and Floodplain Protection
  - (a) Encourage nonstructural solutions to water resource problems and give adequate consideration to nonstructural alternatives whenever structural works are proposed.

- (b) Manage the construction and operation of facilities which dam, divert, or otherwise alter the flow of surface waters to minimize damage from flooding, soil erosion or excessive drainage.
  - (c) Encourage the management of floodplains and other flood hazard areas to prevent or reduce flood damage, consistent with establishment and maintenance of desirable hydrologic characteristics and associated natural systems.
  - (d) Encourage the development and implementation of a strict floodplain management program by state, regional, and local governments designed to preserve floodplain functions and associated natural systems.
  - (e) Avoid the expenditure of public funds that encourage or subsidize incompatible new development or significant expansion of existing development in high-hazard flood areas.
  - (f) Minimize flood-related emergencies, human disasters, loss of property, and other associated impacts.
- (4) Natural Systems Protection and Management
- (a) Establish minimum flows and levels to protect water resources and the environmental values associated with marine, estuarine, freshwater, and wetlands ecology.
  - (b) Mitigate adverse impacts resulting from prior alteration of natural hydrologic patterns and fluctuations in surface and ground water levels.
  - (c) Utilize, preserve, restore, and enhance natural water management systems and discourage the channelization or other alteration of natural rivers, streams and lakes.
- (5) Management Policies
- (a) Protect the water storage and water quality enhancement functions of wetlands, floodplains, and aquifer recharge areas through acquisition, enforcement of laws, and the application of land and water management practices which provide for compatible uses.
  - (b) Emphasize the prevention of pollution and other water resource problems.
  - (c) Develop interstate agreements and undertake cooperative programs with Alabama and Georgia to provide for coordinated management of surface and ground waters.

## **Part IV Resource Protection and Management**

### **62-40.410 Water Supply Protection and Management**

The following shall apply to those areas where the use of water is regulated pursuant to Part II of Chapter 373, Florida Statutes:

- (1) No permit shall be granted to authorize the use of water unless the applicant establishes that the proposed use is a reasonable-beneficial use, will not interfere

with presently existing legal uses of water and is consistent with the public interest.

- (2) In determining whether a water use is a reasonable-beneficial use, the following factors will be considered:
  - (a) The quantity of water requested for the use;
  - (b) The demonstrated need for the use;
  - (c) The suitability of the use to the source of water;
  - (d) The purpose and value of the use;
  - (e) The extent and amount of harm caused;
  - (f) The practicality of mitigating any harm by adjusting the quantity or method of use;
  - (g) Whether the impact of the withdrawal extends to land not owned or legally controlled by the user;
  - (h) The method and efficiency of use;
  - (i) Water conservation measures taken or available to be taken;
  - (j) The feasibility of alternative sources such as reclaimed water, stormwater, brackish water and salt water;
  - (k) The present and projected demand for the source of water;
  - (l) The long term yield available from the source of water;
  - (m) The extent of water quality degradation caused;
  - (n) Whether the proposed use would cause or contribute to flood damage;
  - (o) Whether the proposed use would significantly induce saltwater intrusion;
  - (p) The amount of water which can be withdrawn without causing harm to the resource;
  - (q) Whether the proposed use would adversely affect public health; and
  - (r) Whether the proposed use would significantly affect natural systems.
- (3) Water may be reserved from permit use in such locations and quantities, and for such seasons of the year, as is required for the protection of fish and wildlife or the public health or safety. Such reservations shall be subject to periodic review and revision in light of changed conditions. However, all presently existing legal users of water shall be protected so long as such use is not contrary to the public interest.
- (4) Water use shall not be allowed to exceed ground water availability or surface water availability. If either is exceeded, the Districts shall expeditiously implement a remedial program. The remedial program shall consider options such as designation of a water resource caution area, declaration of a water shortage, development of water resource projects, regulation of consumptive water users, or other options consistent with this chapter and Chapter 373, F.S.
- (5) In implementing consumptive use permitting programs, the Department and the Districts shall recognize the rights of property owners, as limited by law, to make consumptive uses of water from their land, and the rights of other users, as

limited by law, to make consumptive uses of water, for reasonable-beneficial uses in a manner consistent with the public interest that will not interfere with any presently existing legal use of water.

- (6) Permits authorizing consumptive uses of water which cause unanticipated significant adverse impacts on off-site land uses existing at the time of permit application, or on legal uses of water existing at the time of permit application, should be considered for modification, to curtail or abate the adverse impacts, unless the impacts can be mitigated by the permittee.
- (7) The Districts shall determine whether Section 373.233, F.S., entitled “Competing Applications”, and implementing rules, are applicable to pending applications.
- (8) Any reallocation of an existing permitted quantity of water shall be reviewed by the District and shall be subject to full compliance with the applicable permitting criteria of the District.

#### **62-40.412 Water Conservation**

The overall water conservation goal of the state shall be to prevent and reduce wasteful, uneconomical, impractical, or unreasonable use of water resources. Conservation of water shall be required unless not economically or environmentally feasible. The Districts shall accomplish this goal by:

- (1) Assisting local and regional governments and other parties in formulating plans and programs to conserve water to meet their long-term needs, including incentives such as longer term or more flexible permits, economic incentives, and greater certainty of supply during water shortages;
- (2) Establishing efficiency standards for urban, industrial, and agricultural demand management which may include the following:
  - (a) Restrictions against inefficient irrigation practices;
  - (b) If a District imposes year-round restrictions, which may include variances or exemptions, on particular irrigation activities or irrigation sources, using a uniform time period of 10:00 a.m. to 4:00 p.m.;
  - (c) Minimizing unaccounted for water losses;
  - (d) Promoting water conserving rate structures;
  - (e) Water conserving plumbing fixtures, xeriscape, and rain sensors.
- (3) Maintaining public information and education programs for long- and short-term water conservation goals;
- (4) Executing provisions to implement the above criteria and to consistently apply water shortage restrictions between those Districts whose boundaries contain political jurisdictions located in more than one District.

#### **62-40.416 Water Reuse**

- (1) As required by Section 373.0391(2)(e), F.S., the Districts shall designate areas that have water supply problems which have become critical or are anticipated to

become critical within the next 20 years. The Districts shall identify such water resource caution areas during preparation of a District Plan pursuant to Rule 62-40.520, F.A.C., and shall adopt and amend these designations by rule.

- (2) In implementing consumptive use permitting programs, a reasonable amount of reuse of reclaimed water shall be required within designated water resource caution areas, unless objective evidence demonstrates that such reuse is not economically, environmentally, or technically feasible.
- (3) The Districts shall periodically update their designations of water resource caution areas by rule. Such updates shall occur within one year after updates of the District Plan prepared pursuant to Rule 62-40.520, F.A.C. After completion of the District Plan or updates pursuant to Rule 62-40.520, F.A.C., the Districts may limit areas where reuse shall be required to areas where reuse is specified as a remedial or preventive action pursuant to Rule 62-40.520, F.A.C. Any such limitation of areas where reuse shall be required shall be designated by rule.
- (4) In implementing consumptive use permitting programs, a reasonable amount of reuse of reclaimed water from domestic wastewater treatment facilities may be required outside of areas designated pursuant to Rule 62-40.416(1), F.A.C., as subject to water supply problems, provided:
  - (a) Reclaimed water is readily available;
  - (b) Objective evidence demonstrates that such reuse is economically, environmentally, and technically feasible; and
  - (c) The District has adopted rules for reuse in these areas.
- (5) The Department encourages local governments to implement programs for reuse of reclaimed water. The Districts are encouraged to establish incentives for local governments and other interested parties to implement programs for reuse of reclaimed water. These rules shall not be deemed to pre-empt any such local reuse programs.

#### **62-40.422 Interdistrict Transfer**

The following shall apply to the transfers of surface and ground water where such transfers are regulated pursuant to Part II of Chapter 373, Florida Statutes:

- (1) The transfer or use of surface water across District boundaries shall require approval of each involved District. The transfer or use of ground water across District boundaries shall require approval of the District where the withdrawal of ground water occurs.
- (2) In deciding whether the transfer and use of surface water across District boundaries is consistent with the public interest pursuant to Section 373.223, Florida Statutes, the Districts should consider the extent to which:
  - (a) Comprehensive water conservation and reuse programs are implemented and enforced in the area of need;

- (b) The major costs, benefits, and environmental impacts have been adequately determined including the impact on both the supplying and receiving areas;
  - (c) The transfer is an environmentally and economically acceptable method to supply water for the given purpose;
  - (d) The present and projected water needs of the supplying area are reasonably determined and can be satisfied even if the transfer takes place;
  - (e) The transfer plan incorporates a regional approach to water supply and distribution including, where appropriate, plans for eventual interconnection of water supply sources; and
  - (f) The transfer is otherwise consistent with the public interest based upon evidence presented.
- (3) The interdistrict transfer and use of ground water must meet the requirements of Section 373.2295, Florida Statutes.

#### **62-40.430 Water Quality**

- (1) Water quality standards shall be enforced pursuant to Chapter 403, Florida Statutes, to protect waters of the State from point and non-point sources of pollution.
- (2) State water quality standards adopted by Department rule shall be a part of the Florida Water Plan.

#### **62-40.432 Surface Water Protection and Management**

- (1) Surface Water Protection and Management Goals.

The following goals are established to provide guidance for Department, District and local government storm water management programs:

- (a) It shall be a goal of surface water management programs to protect, preserve and restore the quality, quantity and environmental values of water resources. A goal of surface water management programs includes effective storm water management for existing and new systems which shall seek to protect, maintain and restore the functions of natural systems and the beneficial uses of waters.
- (b) The primary goals of the state's storm water management program are to maintain, to the maximum extent practicable, during and after construction and development, the pre-development storm water characteristics of a site; to reduce stream channel erosion, pollution, siltation, sedimentation and flooding; to reduce storm water pollutant loadings discharged to waters to preserve or restore beneficial uses; to reduce the loss of fresh water resources by encouraging the reuse of storm water; to enhance ground water recharge by promoting infiltration of storm water in areas with appropriate soils and geology; to maintain the appropriate salinity regimes in estuaries needed to support the natural flora and fauna; and to address storm water management

on a watershed basis to provide cost effective water quality and water quantity solutions to specific watershed problems.

- (c) Inadequate management of storm water throughout a watershed increases storm water flows and velocities, contributes to erosion and sedimentation, overtaxes the carrying capacity of streams and other conveyances, disrupts the functions of natural systems, undermines floodplain management and flood control efforts in downstream communities, reduces ground water recharge, threatens public health and safety, and is the primary source of pollutant loading entering Florida's rivers, lakes and estuaries, thus causing degradation of water quality and a loss of beneficial uses. Accordingly, it is a goal to eliminate the discharge of inadequately managed storm water into waters and to minimize other adverse impacts on natural systems, property and public health, safety and welfare caused by improperly managed storm water.
  - (d) It shall be a goal of storm water management programs to reduce unacceptable pollutant loadings from older storm water management systems, constructed before the adoption of Chapter 62-25, F.A.C., (February 1, 1982), by developing watershed management and storm water master plans or District-wide or basin specific rules.
  - (e) The concept of developing comprehensive watershed management plans in designated watersheds is intended not only to prevent existing environmental, water quantity, and water quality problems from becoming worse but also to reduce existing flooding problems, to improve existing water quality, and to preserve or restore the values of natural systems.
- (2) Watershed management goals shall be developed by the District for all watersheds within the boundaries of each District and shall be consistent with the Surface Water Improvement and Management (SWIM) program and the EPA National Pollution Discharge Elimination System (NPDES) program. Watershed management goals shall be included in the District Water Management Plans.
  - (3) Storm Water Management Program Implementation.

As required by Section 403.0891, F.S., the Department, Districts and local governments shall cooperatively implement on a watershed basis a comprehensive storm water management program designed to minimize the adverse effects of storm water on land and water resources. All such programs shall be mutually compatible with the State Comprehensive Plan (Chapter 187, Florida Statutes), the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Florida Statutes), the Surface Water Improvement and Management Act (Sections 373.451-.4595, F.S.), Chapters 373 and 403, F.S., and this chapter. Programs shall be implemented in a manner that will improve and restore the quality of waters that do not meet state water quality standards and maintain the water quality of those waters which meet or exceed state water quality standards.



- (a) The Department shall be the lead agency responsible for coordinating the statewide storm water management program by establishing goals, objectives and guidance for the development and implementation of storm water management programs by the Districts and local governments. The Department shall implement the state storm water management program in Districts which do not have the economic and technical resources to implement a comprehensive storm water and surface water management program.
  - (b) The Districts which have implemented a comprehensive storm water and surface water management program shall be the chief administrators of the state storm water management program. The Department or the Districts, where appropriate, shall set regional storm water management goals and policies on a watershed basis, including watershed storm water pollutant load reductions necessary to preserve or restore beneficial uses of receiving waters. For water bodies which fully attain their designated use and meet the applicable state water quality standards, the pollutant load reduction goal shall be zero. Such goals and policies shall be implemented through District SWIM plans, through preparation of watershed management plans in other designated priority watersheds and through appropriate regulations.
  - (c) Local governments shall establish storm water management programs which are in accordance with the state and District storm water quality and quantity goals. Local governments may establish a storm water utility or other dedicated source of funding to implement a local storm water management program which shall include the development and implementation of a storm water master plan and provisions, such as an operating permit system, to ensure that storm water systems are properly operated and maintained.
  - (d) Any water control district created pursuant to Chapter 298, F.S., or special act, and other special districts as defined in Section 189.403(1), F.S., which have water management powers shall:
    - 1. Be consistent with the applicable local comprehensive plan adopted under Part II, Chapter 163, F.S., and state and district storm water quality and quantity goals, for the construction and expansion of water control and related facilities.
    - 2. Operate existing water control and related facilities consistent with applicable state and district storm water quality and quantity goals. Any modification or alteration of existing water control and related facilities shall be consistent with the applicable local government comprehensive plan and state and district storm water quality and quantity goals.
- (4) Surface Water Management.

The following shall apply to the regulation of surface water pursuant to Part IV, Chapter 373, Florida Statutes.

- (a) The construction and operation of facilities which manage or store surface waters, or other facilities which drain, divert, impound, discharge into, or

otherwise impact waters in the state, and the improvements served by such facilities, shall not be harmful to water resources or inconsistent with the objectives of the Department or District.

- (b) In determining the harm to water resources and consistency with the objectives of the Department or District, consideration should be given to:
  - 1. The impact of the facilities on:
    - a. water quality;
    - b. fish and wildlife;
    - c. wetlands, floodplains, estuaries, and other environmentally sensitive lands;
    - d. reasonable-beneficial uses of water;
    - e. recreation;
    - f. navigation;
    - g. saltwater or pollution intrusion, including any barrier line established pursuant to Section 373.033, F.S.;
    - h. minimum flows and levels established pursuant to Section 373.042, F.S.; and
    - i. other factors relating to the public health, safety, and welfare;
  - 2. Whether the facilities meet applicable design or performance standards;
  - 3. Whether adequate provisions exist for the continued satisfactory operation and maintenance of the facilities; and
  - 4. The ability of the facilities and related improvements to avoid increased damage to off-site property, water resources, natural systems or the public caused by:
    - a. floodplain development, encroachment or other alteration;
    - b. retardance, acceleration or diversion of flowing water;
    - c. reduction of natural water storage areas;
    - d. facility failure; or
    - e. other actions adversely affecting off-site water flows or levels.
- (5) Minimum Storm Water Treatment Performance Standards.
  - (a) When a storm water management system complies with rules establishing the design and performance criteria for storm water management systems, there shall be a rebuttable presumption that such systems will comply with state water quality standards. The Department and the Districts, pursuant to Section 373.418, F.S., shall adopt rules that specify design and performance criteria for new storm water management systems which:
    - 1. Shall be designed to achieve at least 80 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state water quality standards.
    - 2. Shall be designed to achieve at least 95 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state water quality standards in Outstanding Florida Waters.
    - 3. The minimum treatment levels specified in subparagraphs 1 and 2 above may be replaced by basin specific design and performance criteria

adopted by a District in order to achieve the pollutant load reduction goals established in paragraph (c).

- (b) Erosion and sediment control plans detailing appropriate methods to retain sediment on-site shall be required for land disturbing activities.
- (c) The pollutant loading from older storm water management systems shall be reduced as necessary to restore or maintain the beneficial uses of waters. The Districts shall establish pollutant load reduction goals and adopt them as part of a SWIM plan, other watershed management plan, or District-wide or basin specific rules.
- (d) Watershed specific storm water pollutant load reduction goals shall be developed for older storm water management systems on a priority basis as follows:
  - 1. The Districts shall include in adopted SWIM Plans numeric estimates of the level of pollutant load reduction goals anticipated to result from planned corrective actions included in the plan.
    - a. For SWIM water bodies with plans originally adopted before January 1, 1992, these estimates shall be established before December 31, 1994.
    - b. For SWIM water bodies with plans originally adopted after January 1, 1992, these estimates shall be established within three years of the plan's original adoption date.
  - 2. Each District shall develop water body specific pollutant load reduction goals for non-SWIM water bodies on a priority basis according to a schedule provided in the District Water Management Plan. The list of water bodies and the schedule shall be developed by each District, giving priority consideration to water bodies that receive discharges from storm water management systems that are required to obtain a NPDES municipal storm water discharge permit.
  - 3. The Districts shall consider economic, environmental, and technical factors in implementing programs to achieve pollutant load reduction goals. These goals shall be considered in local comprehensive plans submitted or updated in accordance with Section 403.0891(3)(a), F.S.

## **62-40.450 Flood Protection**

Flood protection shall be implemented within the context of other interrelated water management responsibilities. Florida will continue to be dependent on some structural water control facilities constructed in the past, and new structural facilities may sometimes be unavoidable in addressing existing and future flooding or other water-related problems. The Department and the Districts shall promote nonstructural flood protection strategies.

### **(1) Flood Protection Responsibilities**

- (a) Local governments have the primary responsibility for regulating land use, enforcing construction criteria for flood prone areas, establishing local storm water management levels of service, constructing and maintaining local

flood control facilities, and otherwise preventing flood damages to new and existing development.

- (b) District flood protection responsibilities relate primarily to serving regional water conveyance and storage needs. Districts have the authority to plan, construct, and operate water control facilities, as well as regulate discharges into works of the District or facilities controlled by the District.
  - (c) Rules adopted under Part IV of Chapter 373, F.S., shall require that appropriate precautions be taken to protect public health and safety in the event of failure of any water control structures, such as pumps and levees.
  - (d) Department and District programs shall discourage siting of incompatible public facilities in floodplains and flood prone areas wherever possible. Where no feasible alternative exists to siting an incompatible public facility in a floodplain or flood prone Area, the facility shall be designed to minimize flood damage risks and adverse impacts on natural flood detention and conveyance capabilities.
  - (e) Each District shall clearly define in its District Water Management Plan, in basin specific plans, or rules, the District's responsibilities related to flood emergencies, including its mechanisms for coordinating with emergency response agencies.
- (2) District Facilities
- (a) District water control facilities shall be operated and maintained in accordance with established plans or schedules.
  - (b) Districts shall assess the design characteristics and operational practices of existing District water control facilities to ascertain opportunities for minimizing adverse impacts on water resources and associated natural systems. Where feasible, facility design modifications or operational changes shall be implemented to enhance natural systems or fulfill other water management responsibilities.

#### **62-40.458 Floodplain Protection**

- (1) The Department and the Districts shall provide leadership to protect and enhance the beneficial values of floodplains. This shall include active coordination with local governments, special districts, and related programs of federal agencies, the Department of Community Affairs, and the Department of Health and Rehabilitative Services. Nothing in this section is intended to diminish the Department's and District's responsibilities regarding flood protection.
- (a) The Department and the Districts shall pursue development of adequate floodplain protection information, including:
  - 1. District determination of flood levels for priority floodplains. At a minimum, this shall include the 100-year flood level, with other flood levels to be determined where needed for watershed-specific management purposes. Districts are encouraged to determine the 10-year flood level for the purpose of assisting the Department of Health and

- Rehabilitative Services to regulate septic tanks in floodplains pursuant to Section 10D-6.0471, F.A.C.
- 2. Identification of floodplains with valuable natural systems for potential acquisition.
- 3. Identification of floodplain areas having potential for restoration of natural flow regimes.
- (b) The Department and the Districts shall develop jointly a comprehensive system of coordinated planning, management, and acquisition to protect and, where feasible, enhance floodplain functions and associated natural systems in floodplains. This system shall include implementation of policies and programs to:
  - 1. Acquire and maintain valuable natural systems in floodplains.
  - 2. Protect the natural water storage and water conveyance capabilities of floodplains.
  - 3. Where feasible, enhance or restore natural flow regimes of rivers and watercourses that have been altered for water control purposes.
- (c) District regulatory programs shall minimize incompatible activities in floodplains. For regulated floodplains, each District, at a minimum, shall ensure that such activities:
  - 1. Will not result in significant adverse effects on surface and ground water levels and surface water flows.
  - 2. Will not result in significant adverse impacts to existing surface water storage and conveyance capabilities of the floodplain.
  - 3. Will not result in significant adverse impacts to the operation of District facilities.
  - 4. Will assure that any surface water management facilities associated with the proposed activity will be capable of being effectively operated and maintained.
  - 5. Will not cause violations of water quality standards in receiving waters.
  - 6. Will not otherwise be harmful to water resources.
- (2) Each District shall provide to local governments and water control districts available information regarding floodplain delineation and floodplain functions and associated natural systems, and assist in developing effective measures to manage floodplains consistently with this Chapter.

#### **62-40.470 Natural Systems Protection and Management**

Programs, plans, and rules to accomplish natural systems protection and management shall include rules to address adverse cumulative impacts, the establishment of minimum flows and levels (Rule 62-40.473, F.A.C.) and may include protection measures for surface water resources (Rule 62-40.475, F.A.C.).

#### **62-40.473 Minimum Flows and Levels**

- (1) In establishing minimum flows and levels pursuant to Section 373.042, consideration shall be given to the protection of water resources, natural seasonal

fluctuations in water flows or levels, and environmental values associated with coastal, estuarine, aquatic, and wetlands ecology, including:

- (a) Recreation in and on the water;
  - (b) Fish and wildlife habitats and the passage of fish;
  - (c) Estuarine resources;
  - (d) Transfer of detrital material;
  - (e) Maintenance of freshwater storage and supply;
  - (f) Aesthetic and scenic attributes;
  - (g) Filtration and absorption of nutrients and other pollutants;
  - (h) Sediment loads;
  - (i) Water quality; and
  - (j) Navigation.
- (2) Established minimum flows and levels shall be protected where relevant to:
- (a) The construction and operation of water resource projects;
  - (b) The issuance of permits pursuant to Part II, Part IV, and Section 373.086, Florida Statutes; and
  - (c) The declaration of a water shortage pursuant to Section 373.175 or Section 373.246, Florida Statutes.
- (3) Each water management district shall advise the Secretary by January 1, 1995 of the date by which each District shall establish minimum flows and levels for surface waterbodies within the District. Priority shall be given to establishment of minimum flows and levels on waters which are located within:
- (a) an Outstanding Florida Water;
  - (b) an Aquatic Preserve;
  - (c) an Area of Critical State Concern; or
  - (d) an area subject to Chapter 380 Resource Management Plans adopted by rule by the Administration Commission, when the plans for an area include waters that are particularly identified as needing additional protection, which provisions are not inconsistent with applicable rules adopted for the management of such areas by the Department and the Governor and Cabinet.

#### **62-40.475 Protection Measures for Surface Water Resources**

- (1) As part of SWIM Plans or basin-specific management plans, programs, or rules, the Districts are encouraged to implement protection measures as appropriate to enhance or preserve surface water resources. Protection measures shall be based on scientific evaluations of particular surface waters and the need for enhancement or preservation of these surface water resources.
- (2) In determining if basin-specific rules should be adopted to establish protection areas, due consideration shall be given to surface waters with the following special designations:
  - (a) an Outstanding Florida Water,

- (b) an Aquatic Preserve,
- (c) an Area of Critical State Concern, or
- (d) an area subject to Chapter 380 Resource Management Plans adopted by rule by the Administration Commission, when the plans for an area include waters that are particularly identified as needing additional protection, which provisions are not inconsistent with applicable rules adopted for the management of such areas by the Department and the Governor and Cabinet.

#### **62-40.510 Florida Water Plan**

- (1) The Department shall formulate an integrated, coordinated Florida Water Plan for the management of Florida's water resources. The scope of the plan shall include the State Water Use Plan and all other water-related activities of the Department and the Districts. It shall give due consideration to the factors in Section 373.036(2), F.S.
- (2) The Florida Water Plan shall be developed in coordination with District Water Management Plans and include, at a minimum:
  - (a) Department overview, including a discussion of the interrelationships of Department and District programs;
  - (b) Water management goals and responsibilities, including the following areas of responsibilities:
    - 1. water supply protection and management,
    - 2. flood protection and management,
    - 3. water quality protection and management, and
    - 4. natural systems protection and management;
  - (c) Statewide water management implementation strategies for each area of responsibility;
  - (d) Intergovernmental coordination, including the Department's processes for general supervision of the water management districts;
  - (e) Procedures for plan development, including public participation;
  - (f) Methods for assessing program effectiveness and the Department's progress toward implementation of the Plan;
  - (g) Linkages to Department rulemaking, budgeting, program development, and legislative proposals;
  - (h) Strategies to identify the amount and sources of supplemental funding to implement the programs identified in Chapter 373, District Water Management Plans, this Chapter, and any delegated programs;
  - (i) Chapter 62-40, F.A.C., State Water Policy;
  - (j) Appropriate sections of the District Water Management Plans;
  - (k) State water quality standards.
- (3) The Florida Water Plan shall be developed expeditiously and may be phased. It shall be completed by November 1, 1995.

- (4) At a minimum, the Florida Water Plan shall be updated every five years after the initial plan development. Annual status reports on the Plan shall also be prepared by the Department.

## **Part V Water Program Development**

### **62-40.520 District Water Management Plans**

- (1) As required by Section 373.036(4), F.S., a long range comprehensive water management plan shall be prepared by each District which is consistent with the provisions of this Chapter and Section 373.036, Florida Statutes. District Water Management Plans are comprehensive guides to the Districts in carrying out all their water resource management responsibilities, including water supply, flood protection, water quality management, and protection of natural systems. The plans shall provide general directions and strategies for District activities, programs, and rules. They will be implemented by a schedule of specific actions of the District, which may include program development, water resource projects, land acquisition, funding, technical assistance, facility operations, and rule development.
- (2) The District Plan shall include an assessment of water needs and sources for the next 20 years. The District Plan shall identify specific geographical areas that have water resource problems which have become critical or are anticipated to become critical within the next 20 years to be called water resource caution areas. Identification of water resource caution areas needed for imposition of reuse requirements pursuant to Rule 62-40.416, F.A.C., may be accomplished before publication of the complete District Plan.
- (3) Based on economic, environmental, and technical analyses, a course of remedial or preventive action shall be specified for each current and anticipated future problem.
- (4) Remedial or preventive measures may include, but are not limited to, water resource projects; water resources restoration projects pursuant to Section 403.0615, Florida Statutes; purchase of lands; conservation of water; reuse of reclaimed water; enforcement of Department or District rules; and actions taken by local government pursuant to a local government comprehensive plan, local ordinance, or zoning regulation.
- (5) District Plans shall also provide for identifying areas where collection of data, water resource investigations, water resource projects, or the implementation of regulatory programs are necessary to prevent water resource problems from becoming critical.
- (6) District plans shall address, at a minimum, the following subjects:
  - (a) District overview;
  - (b) Water management goals;
  - (c) Water management responsibilities, including:



1. Water supply protection and management, to include needs and sources, source protection, and a schedule for recharge mapping and recharge area designation.
  2. Flood protection and floodplain management. This shall include the District's strategies and priorities for managing facilities and floodplains, and a schedule for District mapping of floodplains.
  3. Water quality protection and management for both surface water and ground water. This shall include the District's strategies, priorities, and schedules to develop pollutant load reduction goals; and
  4. Natural systems protection and management. This shall include a schedule for establishing minimum flows and levels for a priority selection of surface waters and ground waters in the District, considering ground water availability and surface water availability, and a schedule for establishing protection areas for surface waters in the District, where appropriate.
- (d) For each water management responsibility, the following shall be included:
1. Resource assessments, including identification of regionally significant water resource issues and problems, and determinations of the need for ground water basin resource availability inventories in various portions of the District;
  2. Evaluation of options;
  3. Water management policies for identified issues and problems;
  4. Implementation strategies for each issue and problem, including tasks, schedules, responsible entities, and measurable benchmarks.
- (e) Integrated plan, describing how the water problems of each county in the District are identified and addressed;
- (f) Intergovernmental coordination, including measures to implement the plan through coordination with the plans and programs of local, regional, state and federal agencies and governments; and
- (g) Procedures for plan development, including definitions and public participation.
- (7) District Plans shall be developed expeditiously and may be phased. All District Plans shall be accepted by the Governing Board no later than November 1, 1994. A District Water Management Plan is intended to be a planning document and is not self-executing.
- (8) At a minimum, District Plans shall be updated and progress assessed every five years after the initial plan development. Each District shall include in the Plan a procedure for evaluation of the District's progress towards implementing the Plan. Such procedure shall occur at least annually and a copy of the evaluation shall be provided to the Department each year by November 15 for review and comment.
- (9) Plan development shall include adequate opportunity for participation by the public and governments. The Districts shall initiate public workshops at least

four months before Plan acceptance by the Governing Board. At the workshops, a preliminary list of schedules to be included in the Plan shall be presented.

#### **62-40.530 Department Review of District Water Management Plans**

- (1) After acceptance by the District Governing Board, District Water Management Plans shall be submitted to the Department.
- (2) Within sixty days after receipt of a Plan for review, the Department shall review each Plan for consistency with this Chapter and recommend any changes to the Governing Board.
- (3) After consideration of the comments and recommendations of the Department, the Governing Board shall, within sixty days, either incorporate the recommended changes into the Plan or state in the Plan, with specificity, the reasons for not incorporating the changes.
- (4) Plan amendments shall follow the same process as for initial Plan acceptance.

#### **62-40.540 Water Data-40.540 Water Data**

- (1) All local governments, water management districts, and state agencies are directed by Section 373.026(2), F.S., to cooperate with the Department in making available to the Department such scientific or factual data as they may possess. The Department shall prescribe the format and ensure the quality control for all water quality data collected or submitted.
- (2) The Department is the state's lead water quality monitoring agency and central repository for surface water and ground water information. The Department shall coordinate Department, District, state agency, and local government water quality monitoring activities to improve data and reduce costs.
- (3) The U.S. Environmental Protection Agency water quality data base (STORET) shall be the central repository of the state's water quality data. All appropriate water quality data collected by the Department, Districts, local governments, and state agencies shall be placed in the STORET system within one year of collection.
- (4) The Department's biennial state water quality assessment (the "305(b) Report") shall be the state's general guide to water quality assessment and should be used as the basis for assessments unless more recent, more accurate, or more detailed information is available.
- (5) Appropriate monitoring of water quality and water withdrawal shall be required of permittees.
- (6) The Districts shall implement a strategy for measuring, estimating, and reporting withdrawal and use of water by permitted and exempted users. Thresholds for measurement requirements and reporting applicable to permittees shall be established and adopted by rule.
- (7) The Department and the Districts shall coordinate in the development and implementation of a standardized computerized statewide data base and

methodology to track activities authorized by environmental resource permits in wetlands and waters of the state. The data base will be designed to provide for the rapid exchange of information between the Department and the Districts. The Department will serve as the central repository for environmental resource permit data and shall specify the data base organization and electronic format in which the data are to be provided by the Districts.

## **Part VI Water Program Administration and Evaluation**

### **62-40.610 Review and Application**

- (1) This Chapter shall be reviewed periodically, but in no case less frequently than once every four years. Revisions, if any, shall be adopted by rule.
- (2) Within 12 months after adoption or revision of this Chapter, the Districts shall have revised their rules and reviewed their programs to be consistent with the provisions contained herein.
- (3) District rules adopted after this Chapter takes effect shall be reviewed by the Department for consistency with this Chapter.
- (4) At the request of the Department, each District shall initiate rulemaking pursuant to Chapter 120, Florida Statutes, to consider changes the Department determines to be necessary to assure consistency with this Chapter. The Department shall be made a party to the proceeding.
- (5) District water policies may be adopted which are consistent with this Chapter, but which take into account differing regional water resource characteristics and needs.
- (6) A District shall initiate rulemaking or program review to consider implementation of programs pursuant to Sections 373.033, 373.042, 373.106, Part III, or Part IV of Chapter 373, Florida Statutes, where the Department or District determines that present or projected conditions of water shortages, saltwater intrusion, flooding, drainage, or other water resource problems, prevent or threaten to prevent the achievement of reasonable-beneficial uses, the protection of fish and wildlife, or the attainment of other water policy directives.
- (7) The Department and Districts shall assist other governmental entities in the development of plans, ordinances, or other programs to promote consistency with this Chapter and District water management plans.

## FLORIDA FOREVER PROGRAM LEGISLATION

The Florida Forever Program is a comprehensive legislative effort that includes statutory amendments that provide guidelines for funding the purchase of environmentally significant lands and water resource development projects. The full legislation is approximately 150 pages long and is found throughout Florida Statutes, including chapters 201, 373, 259, and 215. Due to the comprehensive nature of the Florida Forever Program, the reader is advised to refer to the specific statute of interest cited in the text below.

### SUMMARY

- Florida Forever Fund (10 year funding program) replaces the P2000 Fund. Florida Forever funds can be used for land acquisition and capital projects to implement the District's Florida Forever Work plan. Funding commences in FY2001, most likely spring after legislative session. Such funds can be specifically used for ecosystem management, water resource development, SWIM implementation, and open space and recreation. Funding for water resource development does not include construction of treatment, transmission, or distribution facilities. Land uses authorized also include water supply development, stormwater management, linear facilities, and sustainable agriculture and forestry.
- Separate authority provided for water resource development and water supply projects funded other than with Florida Forever funds. This authority somewhat broader.
- Water Management Land Trust Fund receives limited doc. stamps tax revenues for District land management and pre-acquisition expenses. WMLTF can't be used for land acquisition costs other than pre-acquisition costs. Capital improvements to be funded by WMLTF is defined.
- Land Acquisition Trust Fund receives doc stamps to pay Florida Forever bond debt service.
- Florida Forever Fund receives bond sale proceeds. At least 50% of the funds must be used for land acquisition. Capital improvements are to be identified prior to acquisition of the parcel or the approval of a project.
- New 5 Year Work Plan to be developed that is very comprehensive in nature and integrates all major water management district projects, including SWIM Plans, SOR land acquisition, stormwater management projects, water resource projects, water body restoration projects, and other acquisitions and activities to meet Florida Forever Act goals. Deadline for development of the plan not clear but not earlier than FY 2001. Hopefully glitch bill will specify that plan is due June/July 2001.

- Multiple Use Management- all lands acquired under the Florida Forever Act are to be managed for multiple uses where compatible with resource values and management objectives. Multiple use includes general recreational use, water resource development projects, and sustainable forestry development.

## 1. SOR PROGRAM

SOR program continues until funds allocated to water management districts have been expended or committed. SOR Plan update will be filed with Legislature and DEP by Jan 15 of each year until that time. (See 373.59(2))

**Water Management Lands Trust Fund (WMLTF)** (See s. 201.15, F.S. ) - WMLTF continues in existence. 4.2% of doc stamps distributed to water management districts. **WMLTF can't be used for land acquisition other than pre-acquisition costs.** Acquisition and Restoration Council to decide by 2005 whether to repeal this restriction on land acquisition costs.

Section 373.59 also amended to broaden the purposes for use of the WMLTF to include debt service on bonds issued prior to July 1, 1999 (District may pledge WMLTF as security for revenue bonds or notes issued under 373.584 prior to July 1, 1999), pre-acquisition costs associated with land purchases. It also defines “**capital improvements**” which had already been an authorized purpose, as including but not limited to: perimeter fencing, signs, fire lanes, control of exotic species, controlled burning, habitat inventory and restoration, law enforcement, access roads and trails, and minimal public accommodations, such as primitive campsites, garbage receptacles, and toilets. A district with fund balances in the WMLTF as of March 1, 1999 may use those funds for land acquisitions under 373.139 or for purposes specified in 373.59 (7).

**Payment in Lieu of Taxes** (373.59(10) – Beginning July 1, 1999, not more than one-fourth of WMLTF in any year may be reserved annually by a governing board during the development of its operating budget for payments in lieu of taxes for all actual tax losses resulting from FF program. Payment in-lieu of tax is available 1) to all counties with a population of 150,000 or less in which amount of tax loss from all completed P-2000 and FF acquisitions in the county exceeds .01 percent of county's total taxable value, 2) all local governments located in eligible counties and whose lands are bought and taken off the tax rolls. Local govt defined in 373.59(10)(b)(2). If insufficient funds are available in any year to make full payments, counties and local govt's receive pro rata share. Payment amount on the average amount of actual taxes paid on the property for the 3 years preceding the acquisition. Once eligibility is established, that governmental entity shall receive 10 consecutive annual payments for each tax loss. Applications by governmental entity payment in lieu shall be made no later than Jan 31 of the year following acquisition. Payments made after Department of Revenue certifies that amounts are reasonably appropriate.

## 2. FLORIDA FOREVER ACT (“FFA”) FUNDING (See s. 259.105, F.S.)

**A. Findings and Declaration.** Legislature made ten findings. Crux of which is that the P2000 program was successful, but rapidly growing population is impacting water resources, wildlife habitat, outdoor recreation area space, wetlands, forests, beaches. Potential development of remaining natural areas needs response. Groundwater, surface water and springs are being impacted and to ensure sufficient quantities of water are available to meet needs of natural systems and population, water resource development projects on public lands, where compatible with the resource values of and management objectives for the lands is appropriate. Many unique ecosystems, such as Florida Everglades, facing ecological collapse due to population. Land must be acquired to facilitate ecosystem restoration. Florida Forever program will be developed and implemented with measurable state goals and objectives. Performance measures, standards, outcomes, and goals need to be established at the outset. The legislative intent is to change the focus and direction of state’s major land acquisition programs, including use of land protection agreements and similar tools with private landowners where appropriate, better coordination among public agencies and other entities in their land acquisition programs, long term financial commitment to managing acquired lands, competitive selection process, and bond proceeds will be used to implement the goals and objectives recommended by Florida Forever Advisory Council(FFAC)

**B. District Share.** SFWMD gets 35% of water management districts allocation (\$36.75 million minus bond admin costs and fees) for lands and capital projects to implement the priority lists developed under its FFA 5year workplan in 373.199. **At least 50% of the funds must be used for land acquisition** over the life of the program. See 259.105(3)(a))

**Capital improvement project** defined in s. 259.03(3) as activities relating to acquisition, restoration, public access, and recreational uses of such lands, waters, necessary to accomplish objectives of this chapter. Activities include but not limited to: initial invasive plant removal, enlargement or extension of facility signs, firelanes, access roads, and trails, or any other activities that serve to restore, conserve, protect, or provide public access, recreational opportunities or necessary services for land or water areas. **Such activities shall be identified prior to acquisition of the parcel or the approval of a project.** Continued expenditures necessary for a capital improvement project approved under this subsection not eligible for funding.

**C. DEP Share.** DEP gets 35% of the yearly allocation (approx. \$105million) for state agencies and other entities for lands and projects under the FFA with priority for acquisitions which achieve combination of conservation goals, including protecting FI resources and natural groundwater recharge. **Capital projects not to exceed 10% of such funds.** See 259.105(3)(b) Acquisition and Restoration

Council to accept applications from state agencies, local governments, nonprofit and for profit organizations, private land trust, and individuals for this funding. The Acquisition and Restoration Council (ARC) evaluates the proposals. (See 259.105(3)(b), (7)(a))

**D. WATER RESOURCE DEVELOPMENT PROJECTS** (s. 259.105(6), F.S.)  
Water Resource or Water Supply Development project is allowed if following conditions met:

1. minimum flows and levels established for those waters, if any, which may reasonably be expected to experience significant harm to water resources as a result of the project
2. project complies with all applicable permits
3. project is consistent with the regional water supply plan, if any, of the water management district and with relevant recovery or prevention strategies if required pursuant to 373.0421(2) (this pertains to water bodies expected within 20 years to fall below the minimum flow or level established under 373.042.)

**Water Resource Development** defined in 259.03(6) as a project eligible for funding under 259.105 that increases the amount of water available to meet needs of natural system and enhance or restore aquifer recharge, facilitate capture and storage of excess flows in surface waters, or promotes reuse. These projects include land acquisition, land and water body restoration, ASR facilities, surface water reservoirs, and other capital improvements. **TERM DOES NOT INCLUDE** construction of treatment, transmission, or distribution facilities. (Note see section 8 below for separate authority for such projects where no FFA funds used.)

### **3. FLORIDA FOREVER WATER MANAGEMENT DISTRICT WORKPLAN (s. 373.199, F.S.)**

Overall quality of Florida water resources continue to degrade, surface water natural systems continue to be altered or not restored to fully functioning level, sufficient quantities of water for current and future reasonable beneficial use and for natural systems remain in doubt.

5 Year Workplan is required to identify projects that meet criteria in subsections (3), (4), and (5) below.

3 (a) integrate plans and projects - including SWIM Plans, SOR land acquisition lists, stormwater management projects, proposed water resource projects, proposed water body restoration projects, and other properties and activities that assist in meeting goals of FFA.

(b) cooperate - with ecosystem mgt teams. citizen advisory groups, DEP, and other entities

(4) Workplan list – shall include following information, where applicable.

- (a) water body description, historical and current uses, hydrology, conditions requiring restoration or protection; restoration efforts to date
- (b) other governments with jurisdiction over water body and drainage basin within approved SWIM Plan area, including local, regional, state, and federal units
- (c) land uses within the project area drainage basin, tributaries, point and non-point sources pollution, and permitted discharge activities
- (d) strategies and potential strategies for restoring or protecting water body to Class III or better surface water quality, including improved stormwater management
- (e) studies of water body, stormwater project, or water resource development project
- (f) measures to manage and maintain i) the water body once restored and to prevent future degradation, ii) the stormwater management system , or iii) water resource development
- (g) schedule for i) restoration and protection water body, ii) implementation of stormwater management project, iii) or development of the water resource development project.
- (h) Funding estimate for the restoration, protection, or improvement project or development of new water resources, where applicable, and source of the funding
- (i) Numeric performance measures for each project. Including baseline, performance standard project will achieve, performance measurement itself which reflects incremental improvements toward achieving the performance standard. Measures need to reflect the **goals** in s. 259.105(4). These **goals** pertain to 1) Water Management District projects in their Workplan list (35% of FF funds) and 2) state and other entities projects approved by the Acquisition and Restoration Council (see 259.105(4))

259.105(4) Goals (each goal has method of measurement, see legislation):

- (a) increase protection or increase populations for listed plant species
- (b) increase protection or increase populations for listed animal species
- (c) restoration of land areas by reducing non-native species or regeneration of natural communities
- (d) increase public landholdings



- (e) completion of project begun under previous land acquisition programs
- (f) increase in amount of forest land for sustainable resources
- (g) increase public recreational opportunities
- (h) reduction amount of pollutants flowing into surface waters
- (i) improvement of water recharge rates on public lands
- (j) restoration of water areas
- (k) protection of natural flood plain functions, prevention or reduction in flood damage
- (l) restoration of degraded water bodies
- (m) restoration of wetlands
- (n) preservation of strategic wetlands
- (o) preservation or reduction of contaminants in aquifers and springs
- (j) Permitting and regulatory issues related to the project
- (k) Identification of the proposed public access for projects with land acquisition components
- (l) Identification of lands requiring full fee simple interest to achieve water management goals, lands that can be acquired with alternatives to fee considering acquisition costs, net present value of future land management costs, net present value of local govt. loss of ad valorem revenue, potential for revenue generated by activities compatible with acquisition objectives
- (m) Lands needed to protect or recharge groundwater and plan for their acquisition as necessary to protect potable water supplies.

(5) List to indicate relative significance of each project. The schedule of activities, and sums of money earmarked should reflect those rankings as much as possible over the 5 year planning horizon

**Pollution Responsibility** (259.105(12) – Funds are not to be used to abrogate financial responsibility of point and nonpoint sources that have contributed to the degradation of water or land areas. **Increased priority** is to be given by water management districts to those projects that have secured a cost-sharing agreement allocating responsibility for cleanup of point and nonpoint sources.

Florida Forever Advisory Council to establish specific goals for those identified in s. 259.105(4) above.

**No timeframe given for submittal of the original workplan.** Since FFA funding is not available until FY 2001, presumably the Workplan would not be due earlier than then. Note that FFAC is to prepare a report by November 2000 to among other things establish specific goals identified in 259.105(4). It would make sense

for the report to be completed for guidance to the acquiring agencies in preparing their workplans.

#### 4. WORKPLAN UPDATES (s. 373.199(7) –

By January of each year District must file with DEP and Legislature a report of acquisitions completed during the year together with modifications or additions to its 5Year Workplan. The report must include a description of the land management activity for each property or project area owned by the District. A list of any lands surplusd and the amount of compensation received.

105(3) (this includes water management district allocations), and other aspects of the FFA.

#### 5. PUBLIC HEARING (s. 373.139(3)(a) –

No acquisition of lands shall occur without a public hearing similar to those held pursuant to 120.54.

#### 6. DEP RELEASE OF FUNDS –

Pre- Acquisition Costs – DEP must release funds within 30 days after receipt of GB resolution which identifies and justifies the pre-acquisition costs for 5 year plan lands. (See s. 373.139 (3)(c)

Land Acquisition Costs – DEP must release funds after receipt of GB resolution certifying the acquisition is consistent with 5 year work plan. Each parcel must have at least one appraisal. Acquisitions over 500k require 2 appraisals. Third appraisal may be obtained when first two differ significantly. Purchase price in excess of appraised value requires justification. (s. 373.139 (3)(d)

#### 7. MULTIPLE USE MANAGEMENT (259.105(5) –

All lands acquired under FFA are to be managed for **multiple-use purposes**, where compatible with the resource values and management objectives for the land. “**Multiple-use**” is defined to include i) **outdoor recreational activities** including those under 253.034 (couldn’t find any reference to recreation activities) and 259.032(9)(b) , which include fishing, hunting, camping bicycling, hiking, nature study, swimming, boating, canoeing, horseback riding, diving, model hobbyist activities, birding, sailing, jogging, and other related outdoor activities compatible with the purposes for which the land was acquired, ii) **water resource development projects**, and iii) **sustainable forestry management**.

Lands may be designated for single use as defined in s. 253.034(2)(b) by the decision of the acquiring entity. Single use is defined in .034(2)(b) as management

for one particular purpose to exclusion of all other purposes except compatible secondary purposes which will not interfere or detract with primary management purposes. Single use includes agricultural use, institutional use, use for parks, preserves, wildlife management, archaeological or historic sites, or wilderness areas where maintenance of essentially natural conditions is important. All submerged lands shall be considered single use lands and managed primarily for maintenance of essentially natural conditions, the propagation of fish and wildlife, and public recreation including hunting and fishing where deemed appropriate.

**Reporting on Land Management** (s. 259.032(10)(g) – By July 1 of each year, each Water Management District reports to DEP on land management matters.

## **8. DISTRICT LAND MANAGEMENT (s373.1391) –**

Lands to be managed to ensure balance between public access, general public recreational purposes, and restoration and protection of their natural state. Lands owned, managed and controlled by a district may be used for multiple purposes, including but not limited to agriculture, silvaculture, and water supply, as well as boating and other recreational uses.

Whenever practicable, such lands shall be open to the general public for recreational uses. General public recreation purposes shall include but not be limited to fishing, hunting, horseback riding, swimming, camping, hiking, canoeing, boating, diving, birding, sailing, jogging, and other related outdoor activities to maximum extent possible considering the environmental sensitivity and suitability of those lands. Management plans developed for such lands shall evaluate the lands resource value to establish which parcels, in whole or in part, annually or seasonally, are conducive to general public recreational purposes. The lands shall be made available to the public for these purposes unless the Governing Board can demonstrate that such activities would be incompatible with the purposes for which the lands were acquired. Disputes re land management plans not resolvable by water management districts shall be forwarded to DEP who shall submit it to the FFAC.

Any acquisition of fee or lesser interest that will be leased back/used for agricultural purposes, Governing Board will first consider having a soil and water conservation district created under Ch. 582 manage and monitor the interest.

**Water Resource Development/Water Supply Projects** (s. 373.1391((2)). Lands acquired with funds other than those appropriated under the Florida Forever Act may be used for permissible water resource development and water supply development purposes provided that 1) minimum flows and levels of priority water bodies on such land established, 2) project complies with all applicable permits under Part II of this Chapter, and 3) project is compatible with the purposes for which the land was acquired. (Note this authority seems somewhat

broader than authority for such projects using FFA funding. ( See section 2.C above)

**Additional land uses authorized** (s. 373.1391(5) - The following land uses of lands acquired under the FFA program and other state-funded land purchase programs are authorized upon a finding by the governing board: **water resource development, water supply development, stormwater management , linear facilities, and sustainable agriculture and forestry**, provided they meet all the following criteria: 1) not inconsistent with the management plan for such lands, 2) compatible with the natural ecosystem and resource value of such lands, 3) use is appropriately located on the lands and due consideration to use of other available lands, 4) using entity reasonably compensates the titleholder for such use based on an appropriate measure of value, and 5) the use is consistent with the public interest. Decision of Governing Board presumed correct. Moneys received from the use of state lands shall be returned to the lead managing agency in accordance with s. 373. 59

## **9. UNWILLING SELLERS (s. 373.199(6) –**

District must remove the property of an unwilling seller at the next scheduled update of the plan when requested by the property owner.

## **10. ALTERNATIVES TO FEE ACQUISITION (s. 259.04(11) –**

Beginning in FY99, districts shall implement initiatives to use alternatives to fee simple acquisition. Less than fee simple acquisition that provide public access may be given preference. Legislature recognizes that public access is not always appropriate for less than fee acquisitions and no proposed less than fee simple acquisition shall be rejected simply because public access would be limited. ‘

## **11. CONVEYANCE OF LAND INTERESTS (s. 259.105(17)(a) –**

Water Management Districts may authorize granting lease, easement, or license for use of lands acquired for uses determined to be compatible with the resource values and management objectives for such lands. Presumed any existing lease, easement, or license for incidental public or private use is compatible. However, no such grant of land interest is permissible if it adversely affects the exclusion of interest from gross income of any revenue bond issued to fund the acquisition under IRS regulations.

## **12. SURPLUSING LANDS (s. 373.089(5) –**

Lands acquired for conservation purposes – 2/3 vote to dispose of based on a determination no longer needed for conservation purposes. All other lands may be disposed of by majority vote.

After July 1, 1999, Governing Board needs to determine if land acquired for conservation purposes. All lands acquired prior to July 1 are designated as acquired for conservation purposes.

### **13. DISTRICT RULEMAKING (S.373.1391(6) –**

Districts authorized to adopt rules that specify

1) allowable activities on District owned lands, 2) amount of fees, licenses, or other charges for land users, 3) application and reimbursement process for payments in lieu of taxes, 4) use of volunteers for management activities, 5) process for entering into or severing cooperative land management agreements. Rules only become effective after submitted to Senate President and House Speaker not later than 30 days prior to next regular session for Legislature review and approval.

### **14. FLORIDA FOREVER BONDS (s. 215.618) –**

Authorizes issuance of up to \$3 billion dollars in Florida Forever bonds for **acquisition and improvement** of land, water areas and related property interests for **purposes of restoration, conservation, recreation, water resource development, or historical preservation**, and for **capital improvements** to lands and water areas that accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development subject to provisions of Florida Forever Act and s. 11(e), Art. VII of State Constitution. Fl. Forever bonds equally and ratably secured by Land Acquisition Trust Fund pursuant to s.201.15(1)(a) and payable from taxes distributable to the Land Acquisition Trust fund. Proceeds from the sale of bonds deposited into Florida Forever Trust Fund for distribution by DEP under 259.105. Land Acquisition Trust Fund is continued and recreated pursuant to s. 11(e) , Art. VII, State Constitution. LATF continues for so long as Preservation 2000 bonds or Florida Forever bonds are outstanding and secured.

### **15. DISTRIBUTION OF DOCUMENTARY STAMP TAXES COLLECTED (s. 201.15) –**

Amount to be transferred into Land Acquisition Trust Fund can't exceed \$300 million in FY 2000 to pay debt service, fund debt service reserve funds, etc. for P-2000 bonds, and \$300 million in FY 2001 for Florida Forever bonds.

### **16. FLORIDA FOREVER ADVISORY COUNCIL (s.259.0345) –**

Seven member council appointed by the Governor. FACC tasked with preparing a report to be submitted to DEP, TIITF and Legislature **by November 1, 2000.** Report is to establish specific goals identified in 259.105(4) (which applies to

Water Management Districts pursuant to 373.199(4)(i), provide recommendations for development and identification of performance measures on progress made toward the goals, provide recommendations on the process by which projects are submitted and approved by Acquisition and Restoration Council. FFAC also to provide a report prior to the regular legislative sessions in years 2002, 04, 06, and 08. Report shall provide recommendations for adjusting the goals in 259.105(4), adjusting percentage distributions in 259.

## **17. ACQUISITION AND RESTORATION COUNCIL (s. 259.035) –**

Created effective March 1, 2000. Nine voting members, four appointed by Governor, remaining five comprised of Secretary of DEP, Director, Division of Forestry, ACS Department, Executive Director, Fish and Wildlife Conservation Commission, Director, Historical Resources, Dept. of Start, and Secretary, DCA, or designees. Council provides assistance to TIITF in reviewing recommendations and plans for state-owned lands required under s. 253.034, consider optimization of multiple use and conservation strategies to accomplish the provisions funded in 259.101.(3)(a)(Florida P-2000 Act)